

**INVESTIGATIVE REPORT  
REGARDING ONGOING  
SUITABILITY OF WYNN MA, LLC**



**March 15, 2019**



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## EXECUTIVE SUMMARY

The Investigations and Enforcement Bureau ("IEB") submits the attached report to the Massachusetts Gaming Commission ("Commission" or "MGC") to present the findings of the IEB's recent investigation into the ongoing suitability of Wynn MA, LLC and its current qualifiers, and into related questions regarding the information provided to the Commission in 2013 by Wynn MA, LLC and its then-qualifiers in connection with the application for a Massachusetts gaming license. The Commission previously found Wynn MA, LLC suitable on December 16, 2013, in connection with its Phase 1 application for a gaming license. On September 17, 2014, in connection with its Phase 2 application and after an adjudicatory hearing, the Commission voted to award the Region A gaming license to Wynn MA, LLC. Wynn MA, LLC owns Encore Boston Harbor, an integrated hotel and casino resort currently under development in Everett, Massachusetts. Encore Boston Harbor is scheduled to open in June 2019.

This investigation commenced in the immediate aftermath of an article published on January 26, 2018, in the *Wall Street Journal*. The *Wall Street Journal* article detailed numerous alleged incidents of workplace sexual misconduct and sexual harassment perpetrated by Stephen Wynn upon subordinate employees over the course of years. Mr. Wynn is the co-founder (along with his former wife, Elaine Wynn) and former chief executive officer and chairman of the board of directors of Wynn Resorts, Limited, the ultimate parent company of Wynn MA, LLC. The various Wynn companies are referred to herein as the "Company."

On February 6, 2018, Mr. Wynn stepped down from his positions as CEO and chairman, and as of April 18, 2018, he divested the entirety of his ownership interests in the Company. Consequently, the Commission, on May 7, 2018, determined that he does not meet the criteria under the Massachusetts gaming law and regulations to be designated a "qualifier" for the Massachusetts gaming license, and his current suitability no longer falls within the purview of the Commission. Nonetheless, the Company's conduct during the time period of Mr. Wynn's alleged misconduct and thereafter remains relevant to suitability today.

The IEB's investigation focused on the following four areas:

1. a review of the suitability of individual qualifiers who potentially had knowledge of allegations of sexual misconduct by Mr. Wynn upon employees, including a

review of the information provided by Wynn MA, LLC and its qualifiers in connection with the application for a Massachusetts gaming license in 2013;

2. a review of any Company action, or lack thereof, taken by senior or executive level managers upon learning of the alleged misconduct;
3. the Company's response following the January 2018 press reports regarding the alleged misconduct; and
4. a review of the potential impact of the allegations upon the financial stability of the Company.

It bears noting that the IEB's investigation is a regulatory matter, not a criminal one. Also, because Mr. Wynn's suitability no longer falls under the jurisdiction of the Commission, his suitability is not currently under Commission review. Consequently, the investigation focused on the above four areas and did not set out to determine whether or not Mr. Wynn did in fact sexually harass or perpetrate any sexual assault upon any person. Mr. Wynn has adamantly denied any wrongdoing or engaging in any "relationship that was not consensual."

In the course of its investigation over the past approximately 12 months, the IEB conducted an extensive review of documents, including those maintained by current and former employees at the senior and executive management levels, and documents maintained by current and former in-house and outside attorneys for the Company. IEB investigators traveled to six different states and interviewed over 100 individuals with information about the alleged misconduct and related matters. The IEB's interviews included current and prior employees with knowledge of the alleged sexual misconduct (both as alleged victims/targets and as potential witnesses). The IEB also interviewed current and former executives, senior managers, and qualifiers who were in positions to have potential knowledge of information relevant to the investigation. The IEB also interviewed current and prior in-house and outside attorneys for the Company who were involved in the relevant matters.

The IEB utilized the services of HLT Advisory, Inc. to evaluate the potential impacts of the sexual misconduct allegations against Mr. Wynn upon the financial stability of the Company, and also retained Attorney Denise Murphy from the law firm of Rubin and Rudman LLP to conduct an independent review of how Encore Boston Harbor handled an employee report alleging improper conduct in the workplace.

The Company cooperated with the IEB's investigation, granting all of the IEB's requests for interviews of current Company employees, encouraging outside counsel to agree to meet with IEB investigators, and responding to the IEB's document requests which led to the production by the Company of voluminous materials. Mr. Wynn declined to participate in the investigation, and declined the IEB's repeated requests to speak with him about the subject matter of this investigation.

IEB investigators obtained abundant evidence from dozens of witness interviews and extensive document review, despite the lack of cooperation from Mr. Wynn in this investigation. Overall, of the allegations of sexual misconduct identified in this report, the majority of alleged incidents went unreported to management, with fear of job loss being a major reason noted by the alleged victims and targets for their reluctance to report. Some alleged victims and targets are alleged to have reported incidents to some level of management at the Company. Certain instances reached the upper level of Company management.

The IEB investigation shows that over a course of years, a limited group of executives and employees in positions of authority at the Company, including in the legal division, were aware of certain allegations of sexual misconduct against Mr. Wynn involving employees, but they disregarded Company policies when it came to handling those allegations. The investigation also shows that in some instances particular Company executives, with the assistance of outside counsel, were part of affirmative efforts to conceal allegations against Mr. Wynn that came to their attention. Their efforts at secrecy made it exceedingly difficult, if not impossible, for gaming regulators to detect potentially derogatory information through typical regulatory means, which rely heavily on robust and voluntary self-disclosures by the applicant/licensee.

At no time in the course of the 2013 suitability investigation was the existence of any allegations of sexual misconduct involving Mr. Wynn disclosed to the investigators. For example, in 2013, three individual qualifiers had knowledge of a settlement agreement from 2005 between Mr. Wynn and an employee: Mr. Wynn, Elaine Wynn, and Kimmarie Sinatra. Despite the obligation of the Company to demonstrate suitability in 2013, none of the three qualifiers disclosed any information regarding the settlement to Massachusetts regulators in 2013 or thereafter. The IEB's investigation identified a purported rationale for each of those individuals for the lack of affirmative disclosure. In addition, there is evidence that three months

before the Commission awarded the license to the Company in September of 2014, there was another allegation involving Mr. Wynn and an employee which was not reported to the Commission. The import of these non-disclosures is an issue for the Commission's consideration.

The following consistent themes emerged from the evidence:

- Failure to apply certain of the Company's own policies and procedures to Mr. Wynn, the highest ranking employee at the Company. Of particular concern is that certain high ranking Company executives who knew about allegations lodged against Mr. Wynn by employees failed to follow Company policy mandating an investigation.
- Failure to train Mr. Wynn on the Company's "zero tolerance" sexual harassment policy.
- Failure to document and record sexual misconduct allegations made against Mr. Wynn in a personnel or other centralized file.
- Failure of the Company to require an evaluation of whether outside counsel could simultaneously represent the legal interests of both the Company and Mr. Wynn, in circumstances where Mr. Wynn was alleged to have engaged in sexual misconduct with employees. A fair and objective investigation into the allegations would have informed the Company whether its interests with Mr. Wynn aligned or diverged.
- Failure by certain executives with knowledge of allegations of sexual misconduct by Mr. Wynn to make reports to the Company's board of directors, or to the board's audit or compliance committees.
- The apparent existence of a culture at the Company where employees hesitated to report allegations of sexual misconduct against Mr. Wynn to management, with employees fearful of employment-related consequences, or believing that reporting to management would be futile.
- Failures at the Company potentially diminished the Company's ability to safeguard the well-being of its employees.

In addition to above themes, the IEB's investigation has confirmed the following remedial measures implemented by the Company:

- Mr. Wynn completely separated from the Company within weeks of the publication of the *WSJ* article.
- The board of directors of the Company established a special committee that conducted an in-depth review of matters related to allegations of sexual misconduct by Mr. Wynn, the Company's former CEO and Chairman.

- The Company cooperated with the IEB's investigation.
- High ranking Company executives with confirmed knowledge of the allegations against Mr. Wynn have been removed by the Company or have resigned.
- The Company created a new executive-level human resources position and hired a new, experienced senior vice president of human resources.
- The Company hired a new general counsel who has 33 years of gaming regulatory experience, including as counsel to the Nevada Gaming Control Board and the Nevada Gaming Commission.
- The composition of the Company's board of directors has substantially changed, including the installation of a new Chairman from outside the Company.
- The position of CEO has been separated from the position of Chairman of the Company's board of directors, and an independent Chairman has been installed.
- The Company has implemented enhanced training and human resources policies, operations and structural changes, and new internal controls, including controls related to Company use of outside attorneys.

As noted above, in the five years since the Commission's initial determination of suitability in December of 2013, there have been considerable changes to the list of qualifiers, and the individuals identified in this investigation as bearing the most responsibility for the corporate failures have been replaced. Of the 11 original individual qualifiers, only Matthew Maddox (current president, CEO, and director) and Elaine Wynn (current 9.7 percent shareholder) remain. Information relevant to their suitability is contained in the IEB's report.

The composition of the Company's board of directors also has substantially changed. The Company also has hired a new general counsel, Ellen Whitemore, who has significant gaming regulatory experience and who previously served as a supervising deputy attorney general in Nevada for that agency's gaming division. And the Company has implemented enhanced training and human resources policies and operations, structural changes, and new internal controls in the nine months since the publication of the *Wall Street Journal* article.

HLT Advisory's review and analysis of the potential impact of the allegations of sexual misconduct on the financial stability of the Company indicate that the financial stability remains sufficient for licensure in Massachusetts.



The significant changes in leadership, policies, structure, and internal controls at the Company do not erase the fact that the corporate failures revealed in this investigation are significant, repetitive, and reflective of the Company's historical governance practices. Inaction and failures on the part of the identified former executives at this publicly-traded Company, which was led by its founder at the time, appear to have contributed to a culture where employees were reluctant to report allegations against Mr. Wynn to management. The Commission should evaluate the entirety of the Company's response to the allegations of sexual misconduct in light of the evidence revealed in this investigation and detailed in this report.

## I. INTRODUCTION & RELEVANT BACKGROUND INFORMATION

The Investigations and Enforcement Bureau ("IEB") submits this report to the Massachusetts Gaming Commission ("Commission" or "MGC") to present the findings of the IEB's recent investigation into the ongoing suitability of Wynn MA, LLC and its current qualifiers, and into related questions regarding the information provided to the Commission in 2013 by Wynn MA, LLC and its then-qualifiers in connection with the application for a Massachusetts gaming license. This investigation commenced in the immediate aftermath of an article published on January 26, 2018, in the *Wall Street Journal* ("WSJ"), titled "Dozens of People Recount Pattern of Sexual Misconduct by Las Vegas Mogul Steve Wynn."<sup>1</sup> The *WSJ* article detailed numerous alleged incidents of workplace sexual misconduct and sexual harassment perpetrated by Stephen Wynn (hereinafter referred to as "Mr. Wynn") upon subordinate employees over the course of years. Mr. Wynn is the co-founder (along with his former wife, Elaine Wynn) and former Chief Executive Officer and Chairman of the board of directors of Wynn Resorts, Limited, the ultimate parent company of Wynn MA, LLC, the Massachusetts licensee. Throughout this report, the various Wynn companies are referred to as "the Company," unless further specificity is warranted.

The IEB's investigation has focused on the following four areas:<sup>2</sup>

- 1) a review of the suitability of individual qualifiers who potentially had knowledge of allegations of sexual misconduct by Mr. Wynn upon employees, including a review of the information provided by Wynn MA, LLC and its qualifiers in connection with the application for a Massachusetts gaming license in 2013;
- 2) a review of any Company action, or lack thereof, taken by senior or executive level managers upon learning of any alleged misconduct;

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<sup>1</sup> [REDACTED]

<sup>2</sup> At the Commission's public meeting on January 31, 2018, the IEB Director reminded the Commission that it was not the IEB's role to conduct a criminal investigation into sexual assault, but rather the IEB would perform a regulatory review to consist of: "One, a review of the suitability of individual qualifiers, including Steve Wynn and other qualifiers potentially involved in this matter. Two, a review of any corporate action or lack thereof contemporaneous with the alleged misconduct, the questions – who knew what, when, and what if anything did he or she do about it. Three, monitoring and reporting back to the Commission on the corporate response to the information that is clearly now in the public domain. We will be looking at how the company, from the board on down, handles these allegations. And four, a review of how the current situation potentially impacts the financial stability of the company." Over the course of the investigation, the IEB fine-tuned its focus to the areas as set forth in this report.

- 3) the Company's response since the publication of the January 26, 2018 *Wall Street Journal* article regarding alleged misconduct; and
- 4) a review of the potential impact of the allegations upon the financial stability of the Company.

The IEB conducted its investigation and prepared this investigative report in good faith and in anticipation that the Commission would conduct an adjudicatory hearing on this matter.

#### **A. Overview of Relevant Wynn-Related Corporate Entities**

Wynn Resorts, Limited ("Wynn Resorts") is a holding company which owns, develops, and operates integrated hotel and casino resorts. Wynn Resorts was incorporated in the State of Nevada on June 3, 2002. Its principal executive office is located at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109. Wynn Resorts is a publicly traded company listed on the NASDAQ under the symbol "WYNN." Wynn Resorts' initial public offering was made on the NASDAQ on October 25, 2002.

Wynn Resorts indirectly owns and operates integrated hotel and casino resorts in Las Vegas, Nevada and in the Macau Special Administration Region (SAR) of the People's Republic of China ("Macau"). Wynn Resorts' newest venture, Encore Boston Harbor, is currently under construction in Everett, Massachusetts.

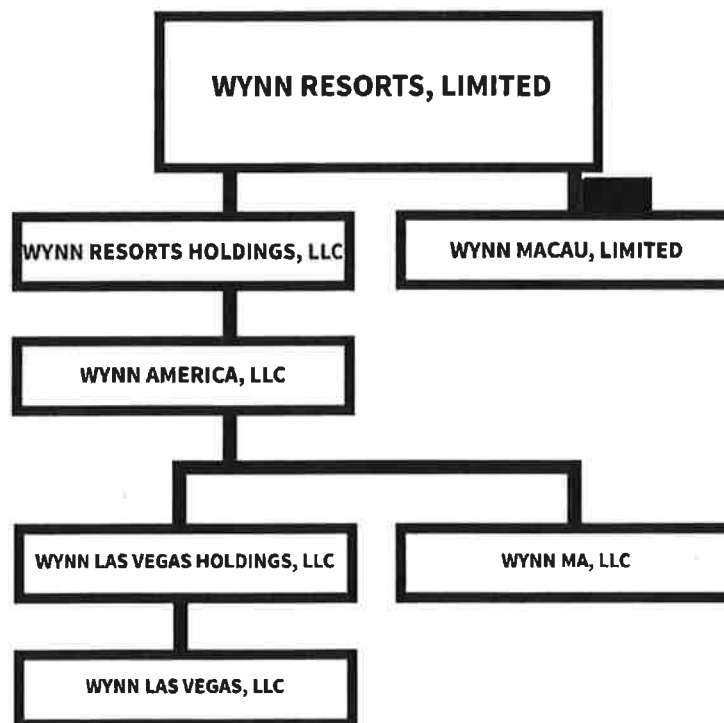
Wynn Resorts indirectly owns 100% of Wynn Las Vegas, LLC, which operates Wynn Las Vegas and Encore at Wynn Las Vegas, an expansion at Wynn Las Vegas. Wynn Las Vegas opened on April 28, 2005, and Encore at Wynn Las Vegas opened several years later on December 22, 2008.

Wynn Macau, Limited is a holding company incorporated in the Cayman Islands. Wynn Macau develops, owns, and operates hotel casino resorts in Macau. Wynn Macau is headquartered at Rua Cidade de Sintra, NAPE, Macau SAR. The Wynn Macau operation consists of Wynn Macau and Encore at Wynn Macau, an expansion at Wynn Macau. It also includes Wynn Palace which is located in the Cotai area. Wynn Macau opened to the public on September 6, 2006, followed by Encore at Wynn Macau on April 21, 2010, and Wynn Palace on August 22, 2016. Wynn Macau, Limited is a publicly traded company listed on the Main Board of the Hong Kong Stock Exchange. Wynn Resorts, Limited is the majority shareholder (approximately [REDACTED]) in Wynn Macau.

Wynn MA, LLC, the Massachusetts licensee, owns Encore Boston Harbor, an integrated hotel and casino resort currently under development in Everett, Massachusetts. Wynn MA, LLC is wholly owned by its sole member, Wynn America, LLC and was formed in Las Vegas, Nevada on May 31, 2011. Wynn America, LLC is wholly owned by its sole member, Wynn Resorts Holdings, LLC, which in turn is wholly owned by Wynn Resorts, Limited, the ultimate parent company. Wynn MA, LLC registered in Massachusetts as a foreign Limited Liability company on January 17, 2013. Encore Boston Harbor is scheduled to open in June 2019.

Below is a chart depicting the relevant portions of the Company's current organizational structure.

**WYNN RESORTS, LIMITED AND RELEVANT SUBSIDIARIES  
ORGANIZATIONAL CHART**



## B. Standards for Suitability

Although it is for the Commission to apply the statutory and regulatory standards for suitability to the facts at issue here, the IEB provides the following summary as context for the Commission's ultimate determinations.

Soon after the passage of the Massachusetts Expanded Gaming Act in 2011, the Commission, by regulation, issued a request for category 1 and category 2 license applications.<sup>3</sup> The Commission's casino application process is bifurcated into two phases: a determination on "suitability" (the Phase 1 process), and the Commission's evaluation of the applicant's site specific plan (the Phase 2 process).<sup>4</sup> Phase 1 calls for applicants and their qualifiers<sup>5</sup> to establish their "suitability" to receive a gaming license and operate a casino in Massachusetts.<sup>6</sup> In demonstrating suitability, the burden is on the applicant and each qualifier to establish by clear and convincing evidence not only financial stability and integrity, but also honesty, integrity, and good character.<sup>7</sup> Honesty is an essential component of suitability. According to G.L. c. 23K, § 13(c), "[i]f the commission determines that an applicant, or a close associate of an applicant, has willfully provided false or misleading information, such applicant shall not be eligible to receive a license under [c. 23K]."

Applicants and qualifiers have a continuing duty to provide any assistance or information required by the Commission, and to cooperate in any Commission investigation.<sup>8</sup> Refusal to answer or produce requested information is a basis for the Commission to deny the license

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<sup>3</sup> See 205 CMR 110, *et seq.*

<sup>4</sup> *Id.* See also G.L. c. 23K, §§ 12, 18.

<sup>5</sup> A "qualifier" is an individual or an entity with a professional interest in a gaming license or the business of a gaming licensee. See G.L. c. 23K, §§ 2, 14. By regulation, company officers and board members must submit to the qualification process. The Commission may, in its sole discretion, require other persons or companies that have a business association of any kind with the applicant to undergo the qualification process. See 205 CMR 116.02.

<sup>6</sup> See 205 CMR 116.01.

<sup>7</sup> See G.L. c. 23K, §§ 12, 13(a), 16(a). See also 205 CMR 115.01(2), and 117.01. In evaluating suitability, the Commission considers overall reputation, including, without limitation: integrity, honesty, and good character; financial stability, integrity and background; business practices and the business ability to establish and maintain a successful gaming establishment; whether there is a history of compliance with gaming licensing requirements in other jurisdictions; whether the applicant, at the time of application, is a defendant in litigation involving business practices; the suitability of all parties in interest to the gaming license; and the financial resources of the applicant.

<sup>8</sup> See G.L. c. 23K, § 13(b); 205 CMR 115.01(4).



application.<sup>9</sup> The process of determining suitability is a predictive analysis, to determine whether the applicant is capable not only of successfully running a casino operation, but also whether the applicant can be relied upon to maintain its suitability and operate with integrity in the highly regulated gaming industry.<sup>10</sup>

Once the Commission issues a positive determination of suitability, a gaming licensee and all qualifiers have a continuing duty to maintain suitability.<sup>11</sup> In essence, individual qualifiers, by virtue of their ownership or executive roles, have the ability to exercise control and provide direction to the gaming licensee. As a consequence, individual qualifiers are reflective of the licensee's suitability.<sup>12</sup> Each licensee must have an approved mechanism for disassociating itself from a qualifier found unsuitable.<sup>13</sup> The gaming licensee and each qualifier also have a continuing duty to update the Commission in the event of various occurrences enumerated in the regulations,<sup>14</sup> and to inform the Commission of any action which the gaming licensee reasonably believes would constitute any violation of the Massachusetts gaming law.<sup>15</sup> Honesty and candor are imperative for licensees and qualifiers. Any licensee or qualifier who willfully provides false or misleading information to the Commission shall have its license conditioned, suspended, or revoked by the Commission.<sup>16</sup>

In Massachusetts, as throughout the country, a gaming license is a revocable privilege.<sup>17</sup> Continued possession of this privilege is conditioned on obedience to the comprehensive legislative and regulatory scheme aimed at regulating gaming in the Commonwealth. General

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<sup>9</sup> Id.

<sup>10</sup> See G.L. c. 23K, § 1(1) ("Ensuring public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme is the paramount policy objective of [the Massachusetts gaming law]"). See also G.L. c. 23K, § 1(3) ("gaming licensees shall be held to the highest standards of licensing and shall have a continuing duty to maintain their integrity and financial stability").

<sup>11</sup> See G.L. c. 23K, § 1; 205 CMR 115.01(4), 101(9)(c).

<sup>12</sup> See In the Matter of the Application of Bally's Park Place, Inc. for a Casino License, 10 N.J.A.R. 356, 402-403 (1981), citing Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065 (1972).

<sup>13</sup> See 205 CMR 116.11.

<sup>14</sup> See 205 CMR 115.01(4); 116.04 through 116.08.

<sup>15</sup> See G.L. c. 23K, § 21(a)(10).

<sup>16</sup> See G.L. c. 23K, § 13(c). In In the Matter of Montuori, MGC Docket No. 2016-04-GA (2017), the Commission, in reviewing the hearing officer's interpretation of § 13(c) in the context of the revocation of a gaming service employee registration, previously interpreted the term "willful" to mean "intentional; deliberate" and requiring "ill intent." Id., at 7, 9.

<sup>17</sup> See G.L. c. 23K, § 1(9).

Law chapter 23K, section 1(9) provides that "any license awarded by the commission shall be a revocable privilege and may be conditioned, suspended or revoked upon: (i) a breach of the conditions of licensure . . . ; (ii) any civil or criminal violations of the laws of the commonwealth or other jurisdictions; or (iii) a finding by the commission that a gaming licensee is unsuitable to operate a gaming establishment or perform the duties of their licensed position[.]"<sup>18</sup> In order for the Commission to conclude that a licensee or qualifier has failed to maintain suitability, the Commission must find that there is substantial evidence of the lack of clear and convincing evidence of suitability.<sup>19</sup> Similarly, a determination by the Commission to issue a civil administrative penalty, to require a license condition, or to terminate, revoke, or suspend a license also must be supported by substantial evidence.<sup>20</sup>

Gaming licensees understand that the gaming license itself is a valuable asset that must be safeguarded.<sup>21</sup> Holders of these privileged gaming licenses are expected to be active participants in their own compliance and governance. Voluntary compliance and routine self-reporting to the Commission regarding certain events, including the self-disclosure to the Commission of potential violations of the gaming law or regulations, are conditions of licensure.<sup>22</sup> This is so because casinos operate in a framework where their reputation, honesty, good character, integrity, and responsible business practices are prerequisites for continued licensure. Under our gaming statutory and regulatory scheme, voluntary compliance and self-reporting are intended to complement the more coercive approaches available to the Commission, such as the assessment of civil administrative penalties, the issuance of orders to cease and desist prohibited activity, and the issuance of temporary orders of suspension.<sup>23</sup> Gaming regulators often view the prompt and candid self-reporting of a violation as a mitigating factor in evaluating the appropriate coercive consequence to be imposed for the violation.

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<sup>18</sup> Id.

<sup>19</sup> See 205 CMR 101.01(9)(c).

<sup>20</sup> Id. See also 205 CMR 101.02(14).

<sup>21</sup> Even though Wynn MA, LLC is not yet operational, Wynn Resorts valued the Massachusetts gaming license as an intangible asset worth \$105.2 million at year end 2017. See Wynn Resorts, Limited, Note 6 to *Form 10-K for year ended 12/31/2017 (Intangible Assets)*, p. 87, retrieved from SEC EDGAR website at <http://www.sec.gov/edgar.shtml>.

<sup>22</sup> See G.L. c. 23K, § 21(a)(10); 205 CMR 115.01(4).

<sup>23</sup> See G.L. c. 23K, § 35.

The executives and board members at the Company are well aware of the requirements for self-disclosure. For example, in his sworn interview with the IEB, Matthew Maddox, current president and CEO of Wynn Resorts, acknowledged that the licensee "should really over-disclose and just put it out there about what's going on and what potentially could happen and what [the licensee] think[s] about it."<sup>24</sup> Board member Jay Johnson recognized that the licensee's "relationship with the regulators has to be transparent. . . . [W]hen in doubt, there is no doubt; call a regulator . . . Nobody, nobody likes to get surprised . . . So it gets back to communications and transparency . . . ."<sup>25</sup> Board member Patricia Mulroy recognized that the IEB's "expectation is no different from Nevada's Gaming Control Board [] regulators' expectations. The burden is not on the regulator to investigate. The burden is on [the licensee] to disclose."<sup>26</sup> Former Wynn Resorts general counsel Marc Rubinstein told the IEB investigators, "You don't want the regulators to find out about something serious from the third party . . . . That's gaming law 101."<sup>27</sup>

### **C. The IEB's 2013 Suitability Investigation of Wynn MA, LLC**

In January of 2013, Wynn MA, LLC submitted its Phase 1 application for a license to operate a category 1 resort casino in Region A (the Boston region). At this time, the Commonwealth was for the first time accepting applications for gaming licenses under the 2011 Massachusetts Expanded Gaming Act. To assist with the background review process during this singular period, the Commission retained the services of two highly experienced gaming consulting firms as contract investigators – the Spectrum Gaming Group, LLC and Michael and

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<sup>24</sup>

[REDACTED]

<sup>25</sup>

<sup>26</sup>

<sup>27</sup>

[REDACTED]

Carroll PC. Together, these two firms employed approximately 100 attorneys, accountants, former law enforcement officers, and support staff who worked to assist the newly assembling IEB.

Originally, the Wynn investigation was assigned to the team from Spectrum Gaming. However, in February of 2013, at the initial stage of the investigation, the Company brought to the IEB's attention that a member of a separate business unit of Spectrum was associated with a firm that was at that time an applicant competing with the Company for a license in Pennsylvania. Soon thereafter, the Company contended that a member of Spectrum's Asia affiliate had been engaged by Kazuo Okada, who was at the time the opposing party in litigation involving the Company.<sup>28</sup> In order to protect the integrity of the IEB's investigation and to avoid even the suggestion of any potential bias or conflict of interest, and also to ensure that the investigation proceeded in a timely manner, the IEB, in consultation with the consultant teams, re-assigned the investigation of the Company to Michael and Carroll and re-assigned the investigation of another applicant to Spectrum. Neither the Company nor the other applicant objected to the re-assignments; nor did either of the consulting firms.

#### 2013 Qualifier List

Along with the applicant (Wynn MA, LLC), the following entity qualifier and 11 individual qualifiers were investigated as part of the 2013 suitability investigation.

##### Entity Qualifier

- Wynn Resorts, Limited

##### Individual Qualifiers

- Stephen Wynn (CEO and Chairman of the Board of Wynn Resorts)
- Matthew Maddox (President and Chief Financial Officer of Wynn Resorts)
- Kimmarie Sinatra (Senior Vice President, General Counsel, and Secretary of Wynn Resorts)
- John Strzemp (Executive Vice President and Chief Administrative Officer of Wynn Resorts)
- Alvin Shoemaker (Director for Wynn Resorts)

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<sup>28</sup> See Section X.A.1 of this report for a description of the Okada litigation.

- D. Boone Wayson (Director for Wynn Resorts)
- Robert Miller (Director for Wynn Resorts)
- Elaine Wynn (Director for and 9.7% shareholder in Wynn Resorts)
- Ray Irani (Director for Wynn Resorts)
- James Edward Virtue (Director for Wynn Resorts)
- John Hagenbuch (Director for Wynn Resorts)

After an 11 month long investigation, the IEB submitted an investigative report to the Commission. On December 16, 2013, after an adjudicatory hearing, the Commission found the applicant, Wynn MA, LLC, and its qualifiers suitable.<sup>29</sup> Later, the Commission held administrative proceedings on Wynn MA, LLC's Phase 2 application and ultimately voted to award the Region A gaming license to Wynn MA, LLC on September 17, 2014.

During the course of the 2013 suitability investigation, no allegations of sexual misconduct or sexual harassment involving Mr. Wynn were disclosed to the investigators. In some circumstances, the failure to disclose potentially derogatory information may have a bearing on the suitability of an applicant, a licensee, or a qualifier. Whether Massachusetts law mandated the disclosure of the allegations at issue here is a question for the Commission's consideration.

Investigators conducting the 2013 suitability investigation verified that no criminal charges had been filed against Mr. Wynn at any time; nor had he been named in any civil litigation alleging claims of sexual misconduct or sexual harassment. Review of the minutes from Wynn Resorts' compliance committee meetings and audit committee meetings for the prior three years showed no issues relating to allegations of sexual misconduct or sexual harassment by Mr. Wynn. The investigators' review of the prior Nevada Gaming Control Board's ("NGCB") investigation, which covered the period from June of 2000 to March of 2005 and resulted in the issuance of a license to Mr. Wynn on April 28, 2005, showed no complaints or allegations of sexual misconduct or sexual harassment by Mr. Wynn. Mr. Wynn previously had been found suitable in New Jersey in June of 1995, and in Mississippi in July of 1998. In 2013, Mr. Wynn was also vying for a casino license in Pennsylvania but withdrew from the process by late 2013.

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<sup>29</sup> To demonstrate suitability, the burden is on the applicant and each qualifier to establish by clear and convincing evidence not only financial stability and integrity, but also honesty, integrity, and good character. See G.L. c. 23K, §§ 12, 13(a), 16(a). See also 205 CMR 115.01, and 117, *et seq.*



A check with the Pennsylvania Gaming Control Board ("PGCB") revealed that no information alleging sexual misconduct or sexual harassment by Mr. Wynn had surfaced to the Pennsylvania investigators before the PGCB investigation was discontinued.

#### **D. Current Status of Qualifiers for Wynn MA, LLC**

In the five years since the Commission's initial determination of suitability in December of 2013, there have been considerable changes to the list of qualifiers.

On February 6, 2018, 10 days after the publication of the *WSJ* article, Mr. Wynn resigned from his positions as CEO and Chairman of the board of Wynn Resorts. However, he still held approximately 12% of Wynn Resorts' stock and therefore continued to be a qualifier for the Massachusetts license.<sup>30</sup> Consequently, the investigation into his suitability remained a live issue with respect to the Wynn MA, LLC gaming license. Then, on March 23, 2018, Mr. Wynn completed a sale of the entirety of his interest in Wynn Resorts. He thereafter petitioned the Commission to de-designate him as a qualifier. The Company also filed a petition with the Commission to de-designate Mr. Wynn as a qualifier. The Commission held a hearing on April 12, 2018, and on May 7, 2018, the Commission issued a Decision and Order, concluding that since Mr. Wynn had resigned from his positions with Wynn Resorts and no longer had any ownership interest in Wynn Resorts nor any business association of any kind with Wynn MA, LLC, he was no longer a qualifier for purposes of the Wynn MA, LLC license.<sup>31</sup> Consequently, Mr. Wynn is no longer under the jurisdiction of the Commission, and his individual suitability is no longer a matter for the Commission's determination. However, allegations of workplace sexual misconduct and sexual harassment by Mr. Wynn, the top level executive at the Company, may be relevant to the suitability of Wynn MA, LLC and its remaining entity and individual qualifiers. This is so because actual knowledge (if any) on the part of any qualifiers of such alleged misbehavior in the workplace, coupled with a failure to act to safeguard the Company's employees, would have a bearing on honesty, good character, and integrity.<sup>32</sup> Such knowledge (if any) coupled with a failure to act could also jeopardize the Company's gaming licenses and

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<sup>30</sup> See G.L. c. 23K, §§ 4(11), 14(c); 205 CMR 116.02(1).

<sup>31</sup> [REDACTED]

<sup>32</sup> Given that Mr. Wynn's suitability is no longer under the purview of the MGC, the IEB investigation focused primarily on alleged sexual misconduct dating from the creation of Wynn Resorts, Limited in 2002 up to the present.

could potentially materially affect the Company's financial stability through exposure to civil liability and reputational harm.

1. Qualifier Resignations since 2013

The following individuals have resigned or, in the case of Elaine Wynn, were not re-elected to the board, since the MGC's 2013 suitability determination:

- Stephen Wynn (Former CEO and Chairman of the Board of Wynn Resorts, resigned February 6, 2018)
- Kimmarie Sinatra (Former Executive Vice President, General Counsel, and Secretary of Wynn Resorts, resigned effective July 15, 2018)
- John Strzemp (Former Executive Vice President and Chief Administrative Officer of Wynn Resorts, retired from his full time position at the expiration of his employment contract on March 31, 2017. Mr. Strzemp remained with Wynn Resorts as a senior advisor until December 31, 2017)
- Alvin Shoemaker (Former Director for Wynn Resorts, resigned effective December 31, 2018)
- D. Boone Wayson (Former Director and Chairman of the Board of Wynn Resorts, resigned effective November 6, 2018)
- Robert Miller (Former Director for Wynn Resorts, resigned May 14, 2018)
- Elaine Wynn (Not re-elected to the Board at its annual meeting on April 24, 2015; however remains a qualifier due to her shareholder status)
- Ray Irani (Former Director for Wynn Resorts, resigned March 5, 2018)
- James Edward Virtue (Former Director for Wynn Resorts, did not stand for re-election at the annual shareholders' meeting on May 16, 2018)
- John Hagenbuch (Former Director for Wynn Resorts, did not stand for re-election at the annual shareholders' meeting on May 16, 2018)

2. Current Qualifiers (as of the date of this report, only two current individual qualifiers – Matthew Maddox and Elaine Wynn - were also qualifiers in 2013)

The current list of qualifiers appears below.

Entity Qualifiers<sup>33</sup>

- Wynn Resorts, Limited
- Wynn Resorts Holdings, LLC
- Wynn America, LLC
- Wynn Design and Development, LLC

Individual Qualifiers

- Matthew Maddox (President of Wynn Resorts since November 2013, appointed CEO of Wynn Resorts on February 6, 2018, appointed as a Director for Wynn Resorts on August 3, 2018)
- Ellen Whitemore (Executive Vice President, General Counsel, and Secretary of Wynn Resorts, effective July 16, 2018)
- Craig Billings (Chief Financial Officer and Treasurer of Wynn Resorts since March 1, 2017)
- Elaine Wynn (Current 9.7% shareholder in Wynn Resorts)
- Philip Satre (Newly appointed Chairman of the Board for Wynn Resorts since November 6, 2018; Vice Chairman of the Board for Wynn Resorts from August 6 to November 5, 2018)
- Patricia Mulroy (Director for Wynn Resorts since October 15, 2015)
- Clark Randt (Director for Wynn Resorts since October 15, 2015)
- Jay Johnson (Director for Wynn Resorts since August 22, 2016)
- Margaret (Dee Dee) Myers (Newly appointed Director for Wynn Resorts since April 17, 2018)
- Betsy Atkins (Newly appointed Director for Wynn Resorts since April 17, 2018)

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<sup>33</sup> The IEB is currently conducting background investigations into the suitability of Wynn Resorts Holdings, LLC, Wynn America, LLC, and Wynn Design and Development, LLC. These three entity qualifiers are not relevant to this investigation.

- Winifred (Wendy) Webb (Newly appointed Director for Wynn Resorts since April 17, 2018)
- Richard Byrne (Newly appointed Director for Wynn Resorts since August 3, 2018)

#### **E. The Company's Executive Staff**

The chart below depicts the positions of various Company executives over the years who are relevant to this investigation. This chart is also reproduced as Appendix A.

<b>Name</b>	<b>Title(s)/Job Position(s) (Entity &amp; Years)</b>
Claude Baruk	Managing Director – Salon (WLV 2013-2018)
Blake Feeney	Executive Director – Spa Operations (WLV 2014-2014)
Brian Gullbrants	EVP of Operations (EBH 2017-Present) EVP and General Manager (WLV 2011-2017) SVP and General Manager (WLV 2008-2011)
Matthew Maddox	Director (WRL 2018-Present) Chief Executive Officer (WRL 2018-Present) President (WRL 2013-Present) Chief Financial Officer (WRL 2008-2014) Treasurer (WRL 2006-2014) SVP of Business Development (WRL 2005-2008) SVP of Business Development (WLV 2005-2005) VP and Chief Financial Officer (Worldwide Wynn 2003-2005) Treasurer and VP of Investor Relations (WRL 2002 - 2003) Non-executive Director (WML 2013-2018) Executive Director (WML 2018–Present) Chief Executive Officer (WML 2018-Present)
Stacie Michaels	SVP and General Counsel (WLV 2017-2018) VP and General Counsel (WLV 2015-2017) VP and Assistant General Counsel (WLV 2014-2015) Corporate Counsel (WLV 2009-2014)
Cynthia Mitchum	Executive Assistant (WRL 2002-2018)
Arthur Nathan	SVP and Chief HR Officer (WLV 2003-2007)
Andrew Pascal	President (WLV 2007-2010) President and Chief Operating Officer (WLV 2005-2007) EVP and Chief Operating Officer (WLV 2005-2005) SVP of Product Marketing/Development (WRL 2003-2005)

Marc Rubinstein	EVP and General Counsel (WRL 2002-2006)
Marc Schorr	Chief Operating Officer (WRL 2005-2013) Director (WRL 2010-2012) President and Chief Executive Officer (WLV 2004-2005) Non-executive Director (WML 2009-2013)
Kimmarie Sinatra	EVP, Secretary, and General Counsel (WRL 2014-2018) SVP, Secretary, and General Counsel (WRL 2006-2014) SVP and General Counsel (Worldwide Wynn, LLC 2004-2006) Non-executive Director (WML 2017-2018)
Kevin Tourek	Project Manager/Legal Advisor (WRL 2018-2018) Global Compliance Officer (WRL 2014-2016) SVP and General Counsel (WLV 2006-2014) VP and General Counsel (WLV 2005-2006) VP and Associate General Counsel (WLV 2003-2005)
Steve Weitman	Chief Operating Officer (WLV 2016-Present) SVP of Food & Beverage (WLV 2012-2016) VP of Food & Beverage (WLV 2007-2012) Executive Director of Food & Beverage (WLV 2004-2007)
Doreen Whennen	EVP of Cotai Planning (Worldwide Wynn, LLC 2013-2014) EVP of Hotel Operations (Worldwide Wynn, LLC 2007-2013) EVP of Operations (Worldwide Wynn, LLC 2006-2007) VP of Hotel Operations (WLV 2004-2006)
Maurice Wooden	President (WLV 2013-2018) Chief Operating Officer (WLV 2009-2013) EVP of Food and Beverage (WLV 2005-2009) Non-executive Director (WML 2018-2018)
Stephen Wynn	Chairman (WRL 2002-2018) Chief Executive Officer (WRL 2002-2018) Executive Director/Chairman (WML 2009-2018) Chief Executive Officer (WML 2009-2018)

Key to Chart of Company Employees:

WLV – Wynn Las Vegas, LLC

WRL – Wynn Resorts, Limited

WML – Wynn Macau, Limited

EBH – Encore Boston Harbor



## **F. Outside Attorneys**

For the Commission's convenience, an alphabetical list of outside attorneys who figure in this investigation appears below.

- Attorney Scott Abbott (Kamer Zucker Abbott, LLP - Nevada)
- Attorney Donald Campbell (Campbell and Williams, LLP – Nevada)
- Attorney Jerome Coben (formerly with Skadden, Arps, Slate, Meagher & Flom LLP – Los Angeles)
- Attorney Gregory Kamer (Kamer Zucker Abbott, LLP - Nevada)
- Attorney Barry Langberg (now deceased, formerly of Brownstein Hyatt Farber Schreck, LLP – Nevada, later with Pisanelli Bice, PLLC - Nevada)
- Attorney Jonathan Layne (Gibson Dunn & Crutcher LLP – Los Angeles, CA)
- Attorney James Pisanelli (Pisanelli Bice, PLLC – Nevada, formerly (in 2005) of Schreck Brignone PC - Nevada)
- Attorney Frank Schreck (Brownstein Hyatt Farber Schreck LLP – Nevada, formerly Schreck Brignone PC - Nevada)
- Attorney Barry Slotnick (Buchanan Ingersoll & Rooney, PR – NYC)

## **II. SCOPE & METHODOLOGY OF INVESTIGATION**

### **A. Overview of Investigation's Scope**

By January 31, 2018, the IEB had initiated an investigation into the ongoing suitability of Wynn MA, LLC and its qualifiers. The IEB's investigation has focused on the following four areas:

- 1) a review of the suitability of individual qualifiers who potentially had knowledge of allegations of sexual misconduct by Mr. Wynn upon employees, including a review of the information provided by Wynn MA, LLC and its qualifiers in connection with the application for a Massachusetts gaming license in 2013;
- 2) a review of any Company action, or lack thereof, taken by senior or executive level managers upon learning of any alleged misconduct;
- 3) the Company's response since the publication of the January 26, 2018 *Wall Street Journal* article regarding alleged misconduct; and

- 4) a review of the potential impact of the allegations upon the financial stability of the Company.

In the course of its investigation over the past approximately 12 months, the IEB conducted an extensive review of documents, including those maintained by current and former Company employees at the senior and executive management levels, and documents maintained by current and former in-house and outside attorneys for the Company. IEB investigators traveled to six different states and interviewed over 100 individuals with information relevant to this investigation. The IEB's interviews included current and prior Wynn employees with knowledge of the alleged sexual misconduct (both as alleged victims/targets and as potential witnesses). The IEB also interviewed current and former Company executives, senior managers, and qualifiers who were in positions to have potential knowledge of information relevant to the investigation. The IEB also interviewed certain current and prior in-house and outside attorneys for the Company who were involved in the relevant matters.

A special committee comprised of three of the Company's independent directors retained Gibson Dunn & Crutcher LLP ("Gibson Dunn") in the aftermath of the *WSJ* article to perform an investigation regarding the allegations. Details surrounding the special committee's selection of Gibson Dunn are discussed in Section XII.G of this report.

The IEB utilized the services of HLT Advisory, Inc. and the law firm of Rubin and Rudman LLP to assist the investigation in two discrete areas. HLT Advisory, Inc. is a consulting firm that specializes in gaming, and it evaluated the potential impacts of the sexual misconduct allegations against Mr. Wynn upon the financial stability of the Company. (See Section XIV of this report). Attorney Denise Murphy, a Partner at Rubin and Rudman LLP and Chair of the firm's Labor and Employment Law Practice Group, conducted an independent review of how Encore Boston Harbor handled two employee complaints alleging workplace misconduct by a supervisor. Attorney Murphy's review included a review of the Company's anti-harassment policies. (See Section XIII of this report). Attorney Murphy also provided a memorandum to the IEB discussing the barriers to reporting sexual harassment in the workplace generally.<sup>34</sup>

The Company granted all of the IEB's requests for interviews of current Company employees. The Company also attempted to facilitate the IEB's requests for interviews of former

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<sup>34</sup> [REDACTED]

members of its board of directors; however, the former directors declined to participate in interviews with the IEB. Some former Company executives declined as well, as will be detailed later in this report. In light of the ample evidence obtained from other sources, the IEB made the determination to make only limited use of out-of-state subpoenas so as not to unnecessarily prolong the investigation with jurisdictional challenges.<sup>35</sup>

In February of 2018, the Company provided a signed limited waiver for potential witnesses in this investigation indicating that the Company would take no reprisal or negative action against any witness for participating in the investigations conducted by regulators in Massachusetts or Nevada.<sup>36</sup> Upon the IEB's request, the Company also waived any confidentiality rights and rights to recover for breach of the nondisclosure provisions of the various settlement agreements relevant to this investigation.

Also in February of 2018, the parties to the Okada litigation,<sup>37</sup> including the Company and Mr. Wynn, consented to a stipulation in that case which provided in relevant part:

1. *If any party to this action receives a request from gaming regulators in Massachusetts or Macau, including but not limited for Discovery Material that has been designated as Confidential or Highly Confidential under the Protective Order, the parties may comply with such a request and provide the Discovery Material.*
4. *As to any Discovery Material that has been designated as Confidential or Highly Confidential under the Protective Order and is provided to the Massachusetts and Macau gaming regulators in the future, the gaming regulators are in no way restricted by the Protective Order and may use the information, whether it has been designated or not, in any way that it deems is consistent with or appropriate to fulfil[l] its duties or responsibilities as regulator.<sup>[38]</sup>*

The Company provided the IEB deposition testimony and exhibits associated with the Okada litigation for review.

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<sup>35</sup> See G.L. c. 23K, § 4(31).

<sup>36</sup> [REDACTED]

<sup>37</sup> The Okada litigation is described in Section X.A.1 of this report.

<sup>38</sup> [REDACTED]

The IEB sent subpoenas and voluminous document requests to the Company.<sup>39</sup> The Company produced documents within a reasonable timeframe, with the exception of certain documents that the Company indicated it discovered later.

The IEB also reviewed the ten-count complaint issued by the Nevada Gaming Control Board against the Company on January 25, 2019, and the Stipulation for Settlement and Order signed by the Company and the NGCB regarding that complaint.<sup>40</sup> On February 27, 2019, the Nevada Gaming Commission assessed a fine in the amount of \$20 million against the Company for matters raised in the complaint. The Company had agreed in the Stipulation to pay the fine assessed by the NGC, and the NGCB had agreed not to seek to revoke the Company's license or findings of suitability.

The IEB's investigation posed some challenges, as discussed below.

## **B. Investigative Challenges Posed by the Company**

At the outset of the investigation, the IEB sent the Company a subpoena demanding "[a]ny and all communications by employees of and/or outside counsel for Wynn Resorts and/or affiliated entities, including electronically stored information, pertaining to any and all allegations of sexual misconduct by Stephen A. Wynn." Outside counsel for the company initially sent a response with language that included: "Wynn Resorts . . . objects to the extent [the IEB] seeks information protected by attorney-client privilege and/or work product protection."

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<sup>39</sup> The Company did not challenge any of the subpoenas issued by the IEB on jurisdictional or other grounds.

<sup>40</sup> [REDACTED] The IEB investigation uncovered information that is largely consistent with the information set forth in Counts One through Five, and Counts Eight through Ten of the NGCB Complaint. The matters set forth in Counts Six and Seven of the NGCB complaint were not a discrete focus of the IEB investigation. The IEB investigation focused on four areas (1) a review of the suitability of individual qualifiers who potentially had knowledge of allegations of sexual misconduct by Mr. Wynn upon employees, including a review of the information provided by Wynn MA, LLC and its qualifiers in connection with the application for a Massachusetts gaming license in 2013; (2) a review of any Company action, or lack thereof, taken by senior or executive level managers upon learning of any alleged misconduct; (3) the Company's response since the publication of the January 26, 2018 *Wall Street Journal* article regarding alleged misconduct; and (4) a review of the potential impact of the allegations upon the financial stability of the Company. Count Seven of the NGCB complaint involved allegations of misconduct by an individual other than Mr. Wynn, whom the Company has identified as no longer being employed by the Company. With respect to Count Six of the NGCB complaint, regarding rumors involving employee misconduct that were not investigated by the Company, the IEB interviewed the employee in question, who denied the rumors, and the former HR executive identified as being aware of the rumors is no longer with the Company and denied the IEB's request for an interview.

The IEB pointed out that the Company has a continuing duty to provide any assistance or information required by the Commission, and to cooperate in any Commission investigation, which includes a waiver of the Company's attorney-client confidentiality on relevant matters.<sup>41</sup> After initially declining to waive its attorney-client confidentiality, the Company agreed to provide all requested information after further demand by the IEB.

As previously mentioned, the Company mostly responded in a prompt manner to the IEB's requests for information. However, on September 28, 2018, the Company produced additional documents related to the 2014 settlement (discussed in Section IX.A of this report). By the Company's own admission, the production of these documents was not timely; the Company explained that it had only recently identified them. The Company provided an explanation for the late production of the documents and took steps to perform further searches to ensure that the Company identified and produced all documents responsive to the IEB's requests for documents. The information in those documents required further investigation by the IEB and led to legal proceedings initiated on behalf of Mr. Wynn in Nevada state court to temporarily halt publication of this report. Those legal proceedings are discussed more fully in Section XII.M below.

### **C. Investigative Challenges Posed by Mr. Wynn's Decision Not to Participate in the Investigation**

The IEB made requests in writing through Attorney Brian Kelly, Mr. Wynn's local (Boston) counsel, for a sworn interview of Mr. Wynn, but Mr. Wynn declined at each turn. He declined the opportunity to be interviewed by the IEB without being sworn as well.<sup>42</sup> Mr. Wynn offered to "consider" answering written questions posed by the IEB.<sup>43</sup> However, the IEB regarded his offer to answer written questions to be lacking in sincerity, as he had made the same offer to the special committee investigators, but then declined to answer their written questions and submitted a written statement to them instead, which he later provided to the IEB.<sup>44</sup> In addition to the IEB's requests made in writing, the IEB Director also asked that Mr. Wynn

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<sup>41</sup> See G.L. c. 23K, § 13(b); 205 CMR 115.01(4).

<sup>42</sup> [REDACTED]

<sup>43</sup> [REDACTED]

<sup>44</sup> [REDACTED]

participate in an interview on numerous occasions during conversations with his local counsel, but he did not agree.<sup>45</sup>

Absent an interview, the IEB Director invited Mr. Wynn to provide any exculpatory information to the IEB on sexual misconduct allegations of which he is aware such as, for example, those that have been publicized in the media, settlements that he has entered into, and/or on matters handled by his personal counsel or counsel for the Company.<sup>46</sup> Through his counsel, Mr. Wynn has informed the IEB that he is unable to provide information regarding matters that were the subject of confidentiality agreements.<sup>47</sup> As noted in Section XII.K.1 of this report, Mr. Wynn entered into six settlement agreements following the publication of the January 26, 2018 *WSJ* article, and it was Mr. Wynn who agreed, during the pendency of this investigation, to the confidentiality provisions of those agreements. Further, although the Company waived its rights under the confidentiality provisions in various settlement agreements to which it had confidentiality rights, Mr. Wynn did not. As a result, parties to those settlement agreements may face potential damages claims for very substantial sums, should they make disclosures to the IEB investigators (or others).

For his part, Mr. Wynn has contended that "substantial exculpatory evidence" exists in his favor, that the *WSJ* article is "riddled with inaccuracies and may very well be the subject of future legal proceedings," and that "there is no shortage of publicly-available information that calls into question, if not outright undermines, the defamatory allegations being made against [him]."<sup>48</sup> Mr. Wynn has flatly denied having engaged in any non-consensual sexual activity with employees.<sup>49</sup>

Further investigative challenges were posed when Mr. Wynn sued the MGC in November 2018 claiming that the IEB had invaded his attorney-client privilege. That litigation, and the investigative challenges associated with it, were eventually resolved. The genesis and resolution of that litigation is discussed in Section XII.M of this report.

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45 [REDACTED]  
46 [REDACTED]  
47 [REDACTED]  
48 [REDACTED]  
49 [REDACTED]

#### D. Additional Investigative Challenges

Some of the alleged employee targets and victims of Mr. Wynn's alleged sexual misconduct and sexual harassment declined the IEB's requests to be interviewed. This is not surprising. According to the June 2016 *Report of the Co-Chairs of the U.S. Equal Employment Opportunity Commission's Select Task Force on the Study of Harassment in the Workplace*,<sup>50</sup> the common workplace responses by those who experience sex-based harassment are to avoid the harasser; deny or downplay the gravity of the situation; or attempt to endure, ignore, or forget the behavior. Victims and targets of workplace sexual misconduct often fear that their claims will not be believed and that they will suffer social or professional retaliation, including job loss. These types of fears also arise out of the inherent imbalance of power in employer-employee relationships,<sup>51</sup> and would only be heightened where, as here, the alleged perpetrator was likely viewed not only as the ultimate authority in the Company's workplace, but also as having wide influence in the Las Vegas and gaming communities.

Also, given the sensitive and private nature of the subject matter, it should be expected that some witnesses would elect not to participate in the interview process. The IEB investigators informed potential witnesses and their attorneys that there may be limits on the Commission's ability to guarantee that witness identities would be shielded from public disclosure on an indefinite basis.<sup>52</sup> Additionally, most of the witnesses were located outside the MGC's jurisdiction and had little or no connection to the Massachusetts matter.

In addition, fear of potential litigation initiated by Mr. Wynn cannot be discounted as a factor in deterring alleged victims, targets, and witnesses from cooperating with the IEB's investigation. Mr. Maddox described Mr. Wynn's reputation for filing defamation actions against individuals, stating, "He's quite litigious" and told the IEB that Mr. Wynn has a defamation attorney on a continuous retainer.<sup>53</sup> In fact, the IEB is aware of three separate defamation actions recently filed by Mr. Wynn that are related to the types of allegations raised

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<sup>50</sup> Retrieved from EEOC's website at [https://www.eeoc.gov/eeoc/task\\_force/harassment/report.cfm](https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm).

<sup>51</sup> [REDACTED]

<sup>52</sup> Compare NRS 463.120, and G.L. c. 265, § 24C, with G.L. c. 4, § 7(26), and c. 66, § 10.

<sup>53</sup> [REDACTED]

in the *WSJ* article.<sup>54</sup> As previously mentioned, Mr. Wynn also sued the MGC and the IEB Director herself in her official as well as her personal capacity, seeking not only injunctive relief but also monetary damages.<sup>55</sup>

Further, although the Nevada Gaming Control Board has also conducted an investigation into the allegations raised in the *WSJ* article, and the Macau Gaming Inspection and Coordination Bureau ("DICJ") has conducted a review, there has been no information-sharing from these other jurisdictions. Macau has a strict data privacy law which prohibits the DICJ, or individuals interviewed by the DICJ, from lawfully sharing investigative information with U.S. gaming regulators or with the Company. The IEB sent a request to the DICJ seeking to speak with a representative of the DICJ concerning its review relative to Mr. Wynn, Wynn Resorts, and Wynn Macau, but the DICJ responded that the relevant information is under restrictions and that the DICJ is unable to make information available to the MGC. The IEB interviewed Jay Schall, senior vice president and general counsel for Wynn Macau. He stated that the DICJ has not provided him with information on the status of its review. As for Nevada, the NGCB, citing NRS 463.120, informed the IEB that it was not in a position to reveal any aspect of ongoing investigations. The settlement approved and fine assessed by the Nevada Gaming Commission on February 26, 2019 concerned only the Wynn companies. The NGCB's investigation encompasses more than just the Wynn companies, and is ongoing.

#### **E. The IEB Investigation Reveals Consistent Themes**

Despite certain impediments to the investigation, the IEB investigators obtained abundant evidence from over 100 witness interviews and extensive document review. The following consistent themes arose from the period of Mr. Wynn's tenure at the Company, and the Commission may consider these themes relevant to the ongoing suitability of the licensee:

- Failure to apply certain of the Company's own policies and procedures to Mr. Wynn, the highest ranking employee at the Company. Of particular concern is that certain high ranking Company executives who knew about allegations lodged against Mr. Wynn by employees failed to follow Company policy mandating an investigation.

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<sup>54</sup> See Steve Wynn v. [REDACTED], Case [REDACTED] (D. Nev.); Steve Wynn v. The Associated Press, et al., Case A-18-772715-C (Dist. Ct. Clark County, Nev.) (case dismissed on 8/23/18); and Steve Wynn v. Jorgen Nielsen, Case A-18-773531-C (Dist. Ct. Clark County, Nev.).

<sup>55</sup> See Stephen A. Wynn v. Karen Wells, et al., Case No. A-18-784184-B (Dist. Ct. Clark County, Nev.).



- Failure to train Mr. Wynn on the Company's "zero tolerance" sexual harassment policy.
- Failure to document and record sexual misconduct allegations made against Mr. Wynn in a personnel or other centralized file.
- Failure of the Company to require an evaluation of whether outside counsel could simultaneously represent the legal interests of both the Company and Mr. Wynn, in circumstances where Mr. Wynn was alleged to have engaged in sexual misconduct with employees. A fair and objective investigation into the allegations would have informed the Company whether its interests with Mr. Wynn aligned or diverged.
- Failure by certain executives with knowledge of allegations of sexual misconduct by Mr. Wynn to make reports to the Company's board of directors, or to the board's audit or compliance committees.
- The apparent existence of a culture at the Company where employees hesitated to report allegations of sexual misconduct against Mr. Wynn to management, with employees fearful of employment-related consequences, or believing that reporting to management would be futile.
- Failures at the Company potentially diminished the Company's ability to safeguard the well-being of its employees.

#### **F. Summary of Remedial Measures Implemented by the Company**

In addition to the above themes, the IEB's investigation has confirmed the following, which also may be relevant to the Company's suitability and are discussed more fully in Section XII.I of this report and in the Whitepaper prepared by the Company, which is attached hereto as Appendix B:

- Mr. Wynn completely separated from the Company within weeks of the publication of the *WSJ* article.
- The board of directors of the Company established a special committee that conducted an in-depth review of matters related to allegations of sexual misconduct by Mr. Wynn, the Company's former CEO and Chairman.
- The Company cooperated with the IEB's investigation.
- High ranking Company executives with confirmed knowledge of the allegations against Mr. Wynn have been removed by the Company or have resigned.
- The Company created a new executive-level human resources position and hired a new, experienced senior vice president of human resources.

- The Company hired a new general counsel who has 33 years of gaming regulatory experience, including as counsel to the Nevada Gaming Control Board and the Nevada Gaming Commission.
- The composition of the Company's board of directors has substantially changed, including the installation of a new Chairman from outside the Company.
- The position of CEO has been separated from the position of Chairman of the Company's board of directors, and an independent Chairman has been installed.
- The Company has implemented enhanced training and human resources policies, operations and structural changes, and new internal controls, including controls related to Company use of outside attorneys.

### III. THE COMPANY'S PERSONNEL POLICIES<sup>56</sup>

#### A. The Company's "Zero Tolerance" Sexual Harassment Policy

The Company has maintained a "zero tolerance" policy for any form of sexual harassment since 2004.<sup>57</sup> The sexual harassment policy has been updated several times thereafter.<sup>58</sup> All versions of the sexual harassment policy prohibited all forms of sexual harassment, and offenders were subject to disciplinary action up to and including termination.

The Company's policy has consistently directed any employee who feels he or she is subject to sexual harassment to report it to the employee relations department,<sup>59</sup> the vice president of human resources, the vice president of the employee's own division, the legal department, or any other member of management with whom the employee feels comfortable. The policy has consistently required managers to immediately report allegations of sexual harassment to the employee relations department or, in the case of the 2004 policy, to the vice president of human resources. The policy has consistently prohibited any form of retaliation for

<sup>56</sup> The Company Policies and Procedures referenced in this report and produced as Exhibits applied to Wynn Resorts, Limited, Wynn Las Vegas, LLC, and Encore at Wynn Las Vegas. The Company's current, revised policies appear in the Company's Whitepaper. [REDACTED]

<sup>57</sup> [REDACTED]

<sup>58</sup> [REDACTED]

<sup>59</sup> "Employee relations" is a sub-department within the human resources department. Other examples of sub-departments within the HR department are the employment/compensation department, the training/development department, and the benefits department.

reporting; retaliatory actions will result in discipline, up to and including termination. The policy also has consistently mandated that the employee relations department shall immediately and thoroughly investigate the matter, and shall "follow up" with the employee who reported the misconduct at the completion of the investigation.

#### **B. The Company's Personal Relationships Policy**

Since the Company's inception, it has had a policy on personal relationships between employees.<sup>60</sup> In the relevant time period, the Company's personal relationships policy discouraged, but did not prohibit, romantic or intimate relationships involving a direct or indirect supervisory relationship between employees. The personal relationships policy stated that department managers were to "strictly maintain[] professional relationships with their employees at all times." The policy highlighted the potential for conflicts of interest when romantic or intimate relationships arose between individuals in the supervisory chain, and stated that the Company had the right to take appropriate action in such circumstances.

The Company updated its personal relationship policy in 2016.<sup>61</sup> The 2016 policy added a procedure for employees to report any change in status involving another employee, such as marriage or cohabitation, as well as reporting of romantic or intimate relationships involving a direct or indirect supervisory relationship.

#### **C. The Company's Code of Business Conduct and Ethics**

The Company also had a conflict of interest policy contained in its Code of Business Conduct and Ethics, first effective in 2004 and then revised on several occasions.<sup>62</sup> All versions of this policy state that a conflict occurs when the employee's private interests (including the interests of a family member or an organization with which the employee has a significant relationship) interfere, or appear to interfere, with the interests of the Company. All versions of the Code of Business Conduct and Ethics state that special rules apply to the Company's officers and directors who engage in conduct that creates an actual, apparent, or potential conflict of interest. According to the Code, before engaging in such conduct, Company officers and

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directors are required to make "full disclosure of all facts and circumstances" to the Company's secretary (or in the case of the 2016 version of the Code, to the Company's general counsel) who shall inform and seek the prior approval of the audit committee. Thus, throughout the relevant time period, some form of disclosure to the Company and approval from the audit committee has been required for all employee conflict matters involving officers and directors. This policy was designed to ensure that business decisions are made in the best interests of the publicly traded Company.

#### **IV. THE 2005 SETTLEMENT**

***Summary:*** *A manicurist at Wynn Las Vegas reported to a supervisor that she was raped by Mr. Wynn and that she was pregnant by him. The matter was reported to Marc Schorr, the president and CEO of Wynn Las Vegas and the chief operating officer of Wynn Resorts at the time, who immediately informed Mr. Wynn of the allegations. No internal investigation was conducted by the Company. Instead, a \$7.5 million settlement agreement was reached which included a retraction of the rape allegation, and an LLC was created along with other measures to conceal the existence of the settlement.*

##### **A. A Manicurist's Allegation of Rape by Mr. Wynn is Reported to Marc Schorr, the President & CEO of Wynn Las Vegas and the COO of Wynn Resorts**

On June 21, 2005, Doreen Whennen, the vice president of hotel operations at Wynn Resorts (she left the Company in 2014), received a call from the [REDACTED] manager for the hotel.<sup>63,64</sup> The [REDACTED] manager told Ms. Whennen that "Amy,"<sup>65</sup> a manicurist at the Wynn salon, had made an allegation that Mr. Wynn raped her.<sup>66</sup> Ms. Whennen made notes at the time memorializing her conversation with the [REDACTED] manager.<sup>67</sup> IEB investigators

<sup>63</sup> According to the Company, the position of [REDACTED] manager is not part of the human resources department but is in the reporting line to Ms. Whennen. The IEB notes that the Company stipulated to facts in the NGCB complaint indicating that employees properly reported the 2005 matter to HR, which appears to be a reference to the division training manager.

<sup>64</sup> The IEB was unable to obtain an interview with the [REDACTED] manager.

<sup>65</sup> The IEB utilizes pseudonyms throughout this report for the alleged sexual assault and sexual harassment victims. Cf. G.L. c. 265, § 24C.

<sup>66</sup> [REDACTED]

<sup>67</sup> *Id.* With respect to her notes, Ms. Whennen told IEB investigators, "if they weren't made the first night, they were made the . . . second night, when I went home. . . . [C]hances are, I did one one night and one the next night . . . because . . . the detail was so good." [REDACTED]

interviewed Ms. Whennen.<sup>68</sup> Ms. Whennen also gave deposition testimony in connection with the Okada litigation.<sup>69,70</sup>

According to Ms. Whennen, the [REDACTED] manager told Ms. Whennen that Amy reported she was scheduled to give Mr. Wynn a manicure in his office, but she did not want to go.<sup>71</sup> The [REDACTED] manager went on to tell Ms. Whennen that Amy, while crying and upset, reported that she previously had been raped by Mr. Wynn in the massage room attached to his office, that it was "ugly," that she was the sole provider for her family, and that she feared for her job.<sup>72</sup> The [REDACTED] manager also reported to Ms. Whennen that Amy reported she had engaged in sex with Mr. Wynn twice in his office, and that she was pregnant by him.<sup>73</sup> The information relayed to Ms. Whennen came from Amy's complaint to the [REDACTED] manager and also from another supervisor – an [REDACTED] manager - who spoke with Amy.<sup>74</sup> Ms. Whennen commented to the [REDACTED] manager that "rape" was a very strong word, and Ms. Whennen asked whether Amy's clothes were torn. The [REDACTED] manager answered that they were not.<sup>75</sup> Ms. Whennen asked, "Why do you think she went back the second time?" The [REDACTED] manager responded, "Because she is a very obedient person, and she feared for her job."<sup>76</sup> The [REDACTED] manager cancelled Amy's manicure appointment with Mr. Wynn for that day (June 21, 2005), and Amy went home.<sup>77</sup>

The next morning, on June 22, 2005, Ms. Whennen met privately with Amy.<sup>78</sup> Ms. Whennen told Amy that she had spoken to Mr. Schorr and that Mr. Schorr wanted to speak with

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<sup>68</sup> [REDACTED]  
<sup>69</sup> [REDACTED]  
<sup>70</sup> See Section X.A.1 for a description of the Okada litigation.

<sup>71</sup> [REDACTED]

<sup>72</sup> Id. [REDACTED]

<sup>73</sup> Id. [REDACTED]

<sup>74</sup> The [REDACTED] manager was interviewed by IEB investigators. She told investigators that Amy did not want to go to the manicure appointment for Mr. Wynn as he expected sex from her. The [REDACTED] manager stated that Amy did not use the term "rape" in their conversation.

<sup>75</sup> [REDACTED]

<sup>76</sup> [REDACTED] Ms. Whennen's notes document the response, similarly, as: "She is just an obedient type of person." [REDACTED]

<sup>77</sup> [REDACTED]

<sup>78</sup> [REDACTED]

her.<sup>79</sup> Mr. Schorr was the president and CEO of Wynn Las Vegas and the chief operating officer of Wynn Resorts at the time (he left the Company in 2013). Mr. Schorr and Ms. Whennen then met with Amy in Ms. Whennen's office. Ms. Whennen memorialized the June 22<sup>nd</sup> conversations as well.<sup>80</sup> According to Ms. Whennen's notes, Mr. Schorr told Amy that he was "[t]here on her behalf to let [her] know that there will be an investigation."<sup>81</sup> Mr. Schorr told Amy that this was a "sensitive situation," and asked that she "stay calm and cool."<sup>82</sup> Amy told him that she was emotional because she was pregnant, and Mr. Schorr asked if the father was "the individual that we are talking about." Amy replied, "Yes," and that she was sure.<sup>83</sup> Mr. Schorr told her that, "you understand that I have to report this to the individual?" Amy responded, "Yes."<sup>84</sup> Mr. Schorr then asked Amy for a phone number where she could be reached that afternoon.<sup>85</sup> Mr. Schorr thanked her, again urged her "to try to stay cool," and then sent her home.<sup>86</sup>

According to Amy's employee records, she "resigned" as of June 23, 2005.

Ms. Whennen's notes also indicate that before the [REDACTED] manager contacted Ms. Whennen, the [REDACTED] manager had been contacted about Amy.<sup>87</sup> Years later, on May 18, 2018, the [REDACTED] manager, who no longer works for the Company, sent a demand letter to the Company.<sup>88</sup> On September 4, 2018, the former [REDACTED] manager filed a civil complaint in federal court against the Company for wrongful termination, retaliation, sexual harassment, and intentional infliction of emotional distress.<sup>89</sup> In the complaint, the [REDACTED] manager asserted, among other things, that she met with Amy who told her about an alleged rape by Mr. Wynn and

<sup>79</sup> [REDACTED]

<sup>80</sup> [REDACTED]

<sup>81</sup> Id. [REDACTED]

<sup>82</sup> Id.

<sup>83</sup> Id.

<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> Id. [REDACTED] According to Ms. Whennen's notes, Mr. Schorr came to her office 15 minutes after they met with Amy and stated that the cell number for Amy did not work. Ms. Whennen contacted Amy's supervisor for the number, and the supervisor told Ms. Whennen that Amy had suspended her cell number so that (1) she could save previous calls from Mr. Wynn and (2) Mr. Wynn would not call her anymore on it. [REDACTED]

<sup>87</sup> [REDACTED]

<sup>88</sup> [REDACTED]

<sup>89</sup> [REDACTED]

pregnancy with his child; that she documented the meeting with Amy in a report which was signed by the [REDACTED] manager, the [REDACTED] manager, and Amy; and that she submitted the report to the human resources department in accordance with the Company's protocols.<sup>90</sup> In the 2018 civil complaint, the former [REDACTED] manager also contended that within about 24 hours of forwarding the report to the HR department, Ms. Whennen reprimanded her for sending the report to the HR department, told the [REDACTED] manager that all reports go to Ms. Whennen first, "especially anything concerning Steve Wynn," and instructed the [REDACTED] manager to never speak about the alleged rape incident again.<sup>91</sup> The civil complaint also asserts that after the [REDACTED] manager sent the report to the human resources department, Amy disappeared abruptly, never returned to work, and was unreachable by her colleagues.<sup>92</sup> The civil complaint further states that during the [REDACTED] manager's period of employment at the Company, she reported at least six additional incidents of sexual harassment by Mr. Wynn to Ms. Whennen, but that Ms. Whennen failed to take action, so the [REDACTED] manager took her concerns to Andrew Pascal, then chief operating officer of Wynn Las Vegas.<sup>93</sup> Shortly thereafter, according to the civil complaint, the [REDACTED] manager was abruptly terminated.<sup>94</sup> The former [REDACTED] manager filed an amended complaint on October 23, 2018, which, among other things, added Mr. Wynn as a defendant and also added two additional counts for interference with contractual relations and interference with economic advantage.<sup>95</sup>

In her interview with the IEB, Ms. Whennen's description of the relevant events were inconsistent with the allegations involving her in the [REDACTED] manager's 2018 civil complaint. The IEB also interviewed Mr. Pascal. He told IEB investigators that he had no recollection of any allegations of sexual misconduct involving Mr. Wynn. Mr. Pascal also said that his allegiance was to Elaine Wynn (he is Ms. Wynn's nephew) and that consequently employees were unlikely to bring such matters to his attention. Also, the Company currently disputes the allegations in

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<sup>90</sup> Id. [REDACTED]. The [REDACTED] manager told IEB investigators that she did not recall writing anything down regarding Amy's allegations against Mr. Wynn; however the complaint does not allege that the assistant manager authored the document.

<sup>91</sup> Id. [REDACTED]

<sup>92</sup> Id. [REDACTED]

<sup>93</sup> Id. [REDACTED]

<sup>94</sup> Id. [REDACTED]

<sup>95</sup> [REDACTED]

The IEB was unable to obtain an interview with the [REDACTED] manager.

the former [REDACTED] manager's complaint and has moved to dismiss the complaint; as of the date of this report, the motion to dismiss is still pending.

The Company has informed the IEB that it does not have any documentation in the human resources department regarding any report from the [REDACTED] manager.

According to the Company's sexual harassment policy in effect at the time, the employee relations department (which falls within the human resources department), at the direction of the legal department, is required to conduct an immediate and thorough investigation into all claims of sexual harassment (including sexual assault).<sup>96</sup>

Mr. Schorr, who is no longer with the Company, declined the IEB's request for an interview. He did, however, file a Declaration in connection with the Okada litigation.<sup>97</sup> In the Declaration, dated August 11, 2017, Mr. Schorr stated that as soon as he spoke to Ms. Whennen about Amy's allegations, he "reported the matter to [his] superior."<sup>98</sup> Mr. Schorr's "superior" was Mr. Wynn, the alleged perpetrator of the sexual assault. Mr. Schorr stated the following in his Declaration:

[Schorr:] *Based on the timing (soon after the hotel's opening), the serious nature of the accusations, the information that the employee relayed in her first conversation with her superior (relayed to me by Ms. Whennen), and the target of her accusations, I immediately believed that a lawsuit by this employee against the Company was forthcoming and inevitable. I took action. As soon as I spoke to Ms. Whennen, I reported the matter to my superior, and began assembling information about the allegations and potential legal action. He told me that the accusation was untrue, but he recognized the seriousness of the accusation. The next day, I was contacted by the Company's outside counsel, Frank Schreck, Esq., who had been engaged to address the allegations. Mr. Schreck asked me questions related to his investigation of the accusations. I spoke with the employee that same day. I also recollect that Ms. Whennen was there in her capacity as Vice President of Hotel Operations. I firmly believe that Ms. Whennen immediately understood the serious nature of the allegations and that, because of those allegations, the likelihood of legal action in some form was imminent. I believe that is why she reported the issue to me, who had been in contact with counsel on how to proceed.*

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<sup>96</sup> [REDACTED]

<sup>97</sup> [REDACTED]

<sup>98</sup> Id. [REDACTED]



**B. Chief Human Resources Officer Arthur Nathan<sup>99</sup> Has Knowledge of the 2005 Rape Allegation**

Ms. Whennen told IEB investigators, and testified similarly in her 2017 deposition in the Okada litigation, that she had a conversation with Arthur Nathan about the situation with Amy within the general timeframe of the allegation.<sup>100</sup> Mr. Nathan was the senior vice president and chief human resources officer for Wynn Las Vegas at the time. Their conversation was not part of a scheduled or formal meeting. Rather, it took place while Ms. Whennen and Mr. Nathan were standing outside one of the offices at work.<sup>101</sup> Ms. Whennen learned from her conversation with Mr. Nathan that the matter was being handled by outside attorneys.<sup>102</sup>

Mr. Nathan, who is no longer with the Company, declined the IEB's requests for an interview, but he was deposed in connection with the Okada litigation.<sup>103</sup> In his deposition, he was asked about the 2005 incident, and he testified that he relayed information regarding a claim of rape against Mr. Wynn that was accompanied by a claim of pregnancy.<sup>104</sup> Mr. Nathan testified in the deposition that the matter was handled by Attorney Barry Slotnick.<sup>105</sup> However, in a deposition in connection with the Okada litigation on April 10, 2018, Mr. Nathan testified that Attorney Slotnick had handled a different matter involving Mr. Wynn from 2006, which is described later in this report.<sup>106</sup> Although Mr. Nathan may have conflated the 2005 and 2006 incidents in his deposition testimony, Elaine Wynn confirmed that she contacted Mr. Nathan in 2009 when she learned about the 2005 allegations, and that Mr. Nathan remembered it and was able to give her further details at that time.<sup>107</sup> In addition, Attorney Frank Schreck, who worked on the settlement involving Amy on behalf of Mr. Wynn and the Company, also told IEB

<sup>99</sup> Mr. Nathan left the Company in early 2007.

<sup>100</sup> [REDACTED]

<sup>101</sup> Id.

<sup>102</sup> [REDACTED]

<sup>103</sup> [REDACTED]

<sup>104</sup> Id.

<sup>105</sup> Id.

<sup>106</sup> [REDACTED]

<sup>107</sup> [REDACTED] Further information about Ms. Wynn's discovery of the 2005 incident in 2009 is discussed in Section VII of this report.

investigators and testified in a deposition in the Okada litigation that Mr. Nathan was aware of the 2005 incident at the time.<sup>108</sup>

Mr. Wynn had long term relationships spanning decades with Mr. Schorr,<sup>109</sup> Mr. Nathan,<sup>110</sup> and Attorney Schreck.<sup>111</sup>

### C. A \$7.5 Million Settlement is Quickly Reached and Structured for Utmost Secrecy

After Mr. Schorr talked to Amy, he promptly spoke with Attorney Schreck, whose current firm is Brownstein Hyatt Farber Schreck, LLP and whose firm at the time was Schreck Brignone PC.<sup>112</sup> Shortly before or after, Attorney Schreck also spoke with Mr. Wynn about Amy's allegations.<sup>113</sup> Attorney Schreck brought in one of his firm's partners, Attorney James Pisanelli, to assist with certain details of the settlement. Attorney Pisanelli told IEB investigators that he was unaware at the time that there was an allegation of a sexual assault, and that he only became aware of the rape allegation in 2016.<sup>114</sup> He indicated that he was brought in to handle details of the settlement after an agreement was generally reached.<sup>115</sup>

Amy's initial attorney referred her to Attorney Robert Vannah, who represented Amy in the 2005 settlement negotiations.<sup>116</sup> Amy's husband had his own legal representation.<sup>117</sup> Attorney Schreck told IEB investigators that Attorney Vannah wanted \$7.5 million to settle the case and that there were no negotiations on the dollar amount.<sup>118</sup>

One provision (paragraph 2.3) of the \$7.5 million settlement agreement required Amy to deliver a "retraction letter" withdrawing, retracting and denying any and all allegations against

<sup>108</sup> [REDACTED]  
<sup>109</sup> [REDACTED]  
<sup>110</sup> [REDACTED]  
<sup>111</sup> [REDACTED]  
<sup>112</sup> [REDACTED]  
<sup>113</sup> IEB investigators were not able to confirm the order of conversations between Mr. Schorr, Attorney Schreck, and Mr. Wynn; however Attorney Schreck told investigators that "Marc [Schorr] probably did call me first and tell me that there's an issue." [REDACTED]  
<sup>114</sup> [REDACTED]  
<sup>115</sup> Id.  
<sup>116</sup> [REDACTED]  
<sup>117</sup> Id.  
<sup>118</sup> Id.

Wynn Las Vegas employees, officers, directors, stockholders, or representatives.<sup>119</sup> Amy provided the written "retraction," which she signed and dated July 20, 2005.<sup>120</sup> It stated:

*Prior to my resignation, I made allegations and claims to Wynn Las Vegas, which I now deny. I do not wish to go forward with and am voluntarily retracting, with prejudice, any and all accusations and/or cla[i]ms against Wynn Las Vegas and any of its employees, supervisors, managers, directors, corporate officers, members of its board of directors, customers, vendors and agents.*

The settlement agreement was signed two days later, on July 22, 2005.

In addition to the retraction, the settlement agreement also included a non-disclosure provision prohibiting Amy from communicating about the matter. Paragraph 2.4 of the settlement agreement states that "[Amy] shall be responsible and liable for all breaches of this Agreement, and in particular violations [of] Article IX [the confidentiality provisions] hereof, committed by all members of her immediate family, including all siblings, children and parents, but not including any breach committed by [Amy's husband]."<sup>121</sup>

Under the terms of the settlement agreement, the money was to be dispersed according to the following schedule:

- Upon execution of the agreement, Amy to receive \$3,166,666.67.
- Upon execution of the agreement, Amy's husband to receive \$550,000.
- For 60 consecutive months after execution of the agreement, Amy to receive \$55,555.55 per month (plus accrued interest).
- For 120 consecutive months after execution of the agreement, Amy's husband to receive \$3,750.00 per month (plus accrued interest).<sup>122</sup>

Mr. Wynn was not a named party to the settlement agreement. Instead, Attorney Pisanelli formed an LLC, "Entity Y," so that Mr. Wynn and the Company could avoid being named parties to the agreement.<sup>123</sup> The formation documents for Entity Y were filed with the Nevada Secretary of State's Office on a 24-hour expedited basis, and the articles of organization

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filed for Entity Y list Attorney Pisanelli as the sole manager for the LLC.<sup>124</sup> Attorney Pisanelli told investigators that his "charge" was "to get it resolved and to preserve confidentiality for all parties."<sup>125</sup> Attorney Schreck told IEB investigators the following:

[Question]: *And the creation of the LLC in order to make the payments, was that purpose to hide Steve Wynn's identity so that it would also be confidential? That was an added piece?*

[Schreck]: *Not just Steve Wynn. Just so this whole settlement would be maintained on the confidential agreements.*<sup>[126]</sup>

Several witnesses stated that Mr. Wynn provided the \$7.5 million from his personal funds. Attorney Pisanelli told investigators that he understood that the funds for the settlement agreement came from Mr. Wynn.<sup>127</sup> Mr. Pisanelli told investigators that "I just do have this recollection that it was very clear from Marc Schorr and Art[hur Nathan] and [Attorney Gregory] Kamer that the company was not contributing anything, and that it (Wynn Resorts) was at the table to make sure it was protected."<sup>128</sup> Mr. Wynn testified in his October 5, 2017 deposition in the Okada litigation that he paid Attorney Schreck's legal fees in connection with the 2005 settlement out of his personal funds.<sup>129</sup> Attorney Schreck testified in his deposition that his firm's legal services in this matter were provided for free.<sup>130</sup>

According to Attorney Pisanelli, the funds for the settlement payout were placed into a segregated trust account to be distributed by the law firm according to the terms of the agreement. Attorney Pisanelli told investigators the following about the payment structure:

[Pisanelli]: *So as I recall it, if this were to be a lump-sum payment, I have no reason to doubt it would have been any different than any other closing of litigation, and that is funds would come in to our trust account and then paid out to the plaintiff's or the opposing counsel's law firm. That's how we do all settlements. But this one was a structured payment that was going to last for 10-something years. And so some process had to be put in place. I have a recollection of the other side wanting the structured payment to be pre-funded so that they wouldn't be at risk of having to re-sue or*

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Id.

*re-demand if a payment was missed. And so certificates of deposits were purchased, I think, at a bank that Mr. Schreck was on the Board of Directors. . . . And so that was put in place. There was concern over the gossip factor and confidentiality for both sides of putting in \$7.5 million or whatever the purchase price was for the certificates of deposit. I don't remember if it was \$7.5 million or if that was the future value after all the payments were paid. Whatever that amount of money was, there was concern about having [Mr. Wynn's] name on it and undermining the confidentiality of the settlement agreements. That's where the Entity Y came about. That would be the entity that would just buy the certificates of deposit and be the account holder. And that would give me an opportunity to just monitor that payments were being made. And if something happened, a breach of the confidentiality, or something on the other side that could have triggered a default on behalf of the company or Mr. Wynn, then I was involved and would know if that happened for purposes of managing the structured payments.<sup>[131]</sup>*

Attorney Schreck told IEB investigators and testified in a deposition in the Okada litigation that he considered himself to be representing both Mr. Wynn personally as well as the Company in the matter involving Amy.<sup>132</sup> Mr. Schorr's Declaration prepared in connection with the Okada litigation stated that Attorney Schreck was outside counsel for the Company in the matter.<sup>133</sup> The Company's general counsel, Marc Rubinstein, was not informed of the allegations at the time, and consequently the Company's general counsel was not aware of and did not participate in the settlement negotiations on behalf of the Company.<sup>134</sup> Attorney Schreck told IEB investigators that he did not believe it was necessary to seek any sort of waiver or consent from either Mr. Wynn or the Company for his dual representation, saying, "[I]t's the way it's been for 40 years."<sup>135</sup> This is but one example of the Company's failure to identify the existence of a potential conflict between the Company's interests and those of Mr. Wynn, and to assess outside counsel's obligations with respect to representation accordingly.

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Attorney Schreck told investigators that Attorney Gregory Kamer from the law firm of Kamer Zucker Abbott (KZA) was involved in the 2005 settlement.<sup>136</sup> KZA has represented the Company in labor and employment matters since the Company's early days.<sup>137</sup> IEB investigators interviewed Attorney Kamer on two occasions, and also reviewed KZA's billing and other records from 2005.<sup>138</sup> Attorney Kamer told investigators that he never represented Mr. Wynn in his individual capacity, and only represented the Company.<sup>139</sup> According to Attorney Kamer, it was routine for the Company to contact KZA for advice on general labor and employment questions and general questions about settlements.<sup>140</sup> Attorney Kamer stated that he had no independent recollection whatsoever of being involved in the 2005 settlement with Amy, or of any settlement in the amount of \$7.5 million, or of a settlement involving an allegation of rape against Mr. Wynn, or of an allegation regarding a paternity issue involving Mr. Wynn.<sup>141</sup> According to Attorney Kamer, typically, he had "to fight with [the Company] for \$20,000 to settle cases."<sup>142</sup> Compared to the routine employment matters he typically handled for the Company, those fact patterns would have been "huge" and would have "set off whistles[,] . . . bells, alarms."<sup>143</sup> Attorney Kamer suggested that it would be reasonable to conclude that KZA reviewed the settlement agreement to ensure that the language of the release provision adequately protected the Company from any potential claims.<sup>144</sup>

The Company provided IEB investigators with KZA's billing records from July of 2005.<sup>145</sup> The billing records show that Attorney Kamer billed the Company for the following activity occurring on July 5-8, 2005:

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<sup>136</sup> Id. [REDACTED]

<sup>137</sup> [REDACTED]

<sup>138</sup> [REDACTED]

<sup>139</sup> [REDACTED]

<sup>140</sup> Id. [REDACTED]

<sup>141</sup> Id. [REDACTED]

<sup>142</sup> Id. [REDACTED]

<sup>143</sup> Id. [REDACTED]

<sup>144</sup> [REDACTED]

<sup>145</sup> [REDACTED]

- Teleconference with A. Nathan at KZA offices re: general advice concerning sexual harassment investigation.
- Teleconference with A. Nathan re: protocols for sexual harassment investigation, it was determined Kamer would prepare a proposed draft letter for A. Nathan's eyes only per direction from F. Schreck.
- Draft protocol letter for A. Nathan's eyes only, direct transmission of letter.
- Review and revise draft protocol letter in response to A. Nathan comments
- Redraft of protocols letter with information provided; direct transmission
- Teleconference with A. Nathan re: re draft of letter 2, version 3 may do it.

The Company also provided IEB investigators with KZA's invoice to the Company, dated July 31, 2005, which showed an item invoiced as "sexual harassment investigation protocol."<sup>146</sup> The Company then obtained digital documents from KZA and provided them to IEB investigators. The digital documents<sup>147</sup> consist of the following:

- An index document listing two draft letters for A. Nathan from GJK dated 7/6/05 and 7/7/05.
- An unsigned, undated "Restricted Receipt" which reads: "I HAVE RECEIVED THIS LETTER TO BE OPENED BY ARTE NATHAN ONLY ON THE 7<sup>TH</sup> DAY OF JULY AT \_\_\_\_ O'CLOCK, \_\_.M."
- An unsigned draft letter for Amy's signature referencing her "resign[ation]" from the Company "to pursue other business interests." This letter does not include any denial of the sexual assault allegations and merely states that she was "well treated and respected" by the Company and "had only positive experiences" at the Company and that she "value[s] and relish[es] that experience to this very day." A notification on the top of this document states that it "is intended for Review by Artie (sic) Nathan. If you are not Arte Nathan and you are in possession of this document please stop reading it and call Gregory Kamer immediately at 702-259-8640." This document was entitled "SexualHProtocol7062005" in the KZA electronic storage database.

The restricted receipt, the warning at the top of the draft letter, the captioning of the letter as "SexualHProtocol," and the listing of the billing records of this matter as "Sexual

<sup>146</sup> Id., [REDACTED]

<sup>147</sup> [REDACTED]

Harassment Investigation Protocol" are all consistent with efforts effectuated by the Company's outside employment counsel to maintain the 2005 matter with secrecy.

In Attorney Schreck's interview with IEB investigators, he confirmed that he was aware at the outset that Amy had alleged that Mr. Wynn raped her.<sup>148</sup> Attorney Schreck testified in his 2017 deposition in the Okada litigation regarding the first contact he had with the initial attorney representing Amy:

[Question]: *Can you tell me what you recall about the initial call that you had with [Amy's] attorney?*

...

[Schreck]: *To the best of my recollection, he -- you know, I -- we indicated, you know, that I understand there's an allegation made against Mr. Wynn with respect to [Amy]; and sometime in that conversation the attorney said that there was an assault or a rape. At that point, I said, if that's your position, then this is not a civil case, it's a criminal case, and this conversation ends. And he backed off of that immediately, and we then went ahead and discussed whatever the next moves we would be in terms of trying to resolve the case.*

[Question]: *And when you say "he backed off of that," what do you mean by that?*

[Schreck]: *He basically recanted, because I told him, if it's a criminal matter, I'm not involved. I'd be involved if it's a civil matter. If it's a criminal matter, that's a whole different issue.*

[Question]: *Do you recall what exactly he said in that regard, when you say he recanted?*

[Schreck]: *No, but it was sufficient enough for me to understand that he backed off the assault and basically indicated it was consensual, or I wouldn't have proceeded.<sup>[149]</sup>*

Attorney Schreck made similar statements in his interview with the IEB on May 17, 2018. He told investigators the following:

[Schreck]: *So I talked with [Amy's] attorney and I indicated to him that I understand that they had -- that there were allegations made against Mr. Wynn's conduct in terms of having sexual relationships*

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*with his client as an employee, and I said I understand that there's some allegation possibly of forcible conduct or rape.*

*And I said, if in fact that's the case, . . . then our discussion will be over, because that takes it into a totally different category for me. That's a corporate issue, and that has to go to the corporation. I can't discuss it on behalf of Mr. Wynn now because it's an issue that the corporation has to deal with. So if in fact your allegation, you know, is that there was some kind of unlawful conduct, some illegal conduct that occurred, some criminal conduct, . . . then I can't discuss ant [sic] further with you."*<sup>[150]</sup>

Attorney Schreck told investigators that based on having known Mr. Wynn for 40 years, he did not believe the allegation of rape.<sup>151</sup>

Attorney Vannah was deposed in connection with the Okada litigation on October 23, 2017.<sup>152</sup> He testified that he specializes in plaintiff-side personal injury claims and to a lesser degree also handles some employment claims.<sup>153</sup> He went on to describe the types of employment claims that he typically handles as "wrongful terminations, claims where somebody felt they were sexually harassed, claims where people felt they were raped by a supervisor or something – you know, like maids, for example, a supervisor raped a maid in the bedroom."<sup>154</sup> He explained that employment claims are not the majority of his law practice but that to him, "anything where the employer did something, or they fired somebody because they had filed a workers' comp claim, or they – a case I handled, where the lady got fired because she served on a jury and refused to . . . get off the jury. Those are employment claims. Those are the kinds of claims I've handled."<sup>155</sup> He testified that he viewed the matter with Amy as an employment claim rather than a personal injury/tort claim.<sup>156</sup>

IEB investigators asked Attorney Schreck if he knew how Amy's original attorney or Attorney Vannah got paid for the settlement agreement work.<sup>157</sup> Attorney Schreck responded that Attorney Vannah commented that "this is the fastest million dollars I ever made,' something

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151 Id.

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153 Id.

154 Id.

155 Id.

156 Id.

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like that," indicating that Attorney Vannah had been paid a contingency fee based upon the settlement.<sup>158</sup>

Mr. Wynn was deposed on October 5, 2017 and October 25, 2017 in connection with the Okada litigation. He admitted to having sex with Amy on the Company's premises. He insisted, however, that Amy initiated the encounter. In the October 5, 2017 deposition,<sup>159</sup> he testified as follows:

[Question]: *Now we –we know from the litigation that the – a Wynn employee made an assault allegation against you in 2005. Were those allegations true?*

[Mr. Wynn]: *False.*

[Question]: *Did you have any sort of relationship with this woman?*

[Mr. Wynn]: *I did.*

[Question]: *Did the alleged incident occur at the Wynn Resorts' offices?*

[Mr. Wynn]: *Yes.*<sup>[160]</sup>

Later in the deposition, Mr. Wynn was asked, "[W]hy was the – was a payment of \$7.5 million made to this employee if the allegations were adamantly denied?" Mr. Wynn responded:

[Mr. Wynn]: *That's the question, isn't it?*

...

*That was 97 days after the opening of the Wynn Las Vegas at a cost of \$2.75 [b]illion.*

...

*2.75 billion. 97 days. My name goes up on the sign at the [insistence] of all my colleagues. And along comes this gal who had a turn with me, obviously being advised on what to do, and says she is going to allege, which she alleged. And in a complaint anything is legal and free of liab[ility] and other recourse. Anybody who is over ten years old and knows what goes on in the world knows what happens next. The story gets sensational.*

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<sup>158</sup>

Id.

<sup>159</sup>

<sup>160</sup>

Id.

*You take, as I did with the guy from Girls Gone Wild<sup>161</sup> who made other accusations that were scurrilous, and you spend a million eight or 2 million on legal fees and two or three years getting to court, the story, scurrilous as it may be, attracts all kind of attention. The distance -- the difference between truth and falsity fades into obscurity. The story survives with a life of its own. The damage to reputation is permanent. That's what I was faced with for having sex with this girl. I was guilty. And she initiated it when I was getting a manicure about 10 yards from here in my office. Bad judgment on my part. All the rest was a contrivance to extort money from me, sort of like this case.*

*And then I could make the decision take the ride, prove that it was false, try to get her phone that was destroyed to show she was trying to call me. All the rest of the detail of this which was immediately shoved under the carpet and taken away from us by her lawyers, who only wanted the money, or else we will go blast it out.*

*If it had been me personally, like this lawsuit, I would go for it. To hell with it. Take your best shot. But it was 90-odd days after the opening of the hotel. I said, Jesus, my name is -- the Wynn is on the sign on the top of the building. As vicious, as rotten as the move was, as scurrilous, as lying -- isn't anybody on earth that can breathe that would ever think I will rape someone. Nuts. So in -- in this context seven and a half million was not a significant number. And I paid it.<sup>162</sup>*

In his October 25, 2017 deposition,<sup>163</sup> Mr. Wynn made further statements regarding Amy.

[Mr. Wynn]: *Well, it started off as a manicure. I called for a manicure, and they sent anybody that was available, and she came down. I was sitting in the manicure table and she was up next to me -- I was wearing a T-shirt and a pair of loose-fitting shorts, and she started giving me the manicure, and then rubbed my left -- left or right leg, and put her hands up my shorts, of one leg of my shorts. And I realize now I should have reported it.*

[Question]: *And what happened after that?*

[Mr. Wynn]: *We had sex.*

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<sup>161</sup> In 2012, Mr. Wynn was awarded damages in a defamation case against Joe Francis, the creator of the "Girls Gone Wild" entertainment brand. The defamation case was unrelated to "Girls Gone Wild."

<sup>162</sup> [REDACTED]

<sup>163</sup> [REDACTED]

[Question]: *You didn't instigate this?*

[Mr. Wynn]: *I did not.*<sup>[164]</sup>

When asked in the October 5, 2017 deposition in the Okada litigation whether, upon learning of Amy's allegation, he directed that an investigation be conducted, Mr. Wynn stated, "No, I called my lawyer because I knew that I was . . . about to be the victim of extortion, and . . . my first impulse was to call a lawyer and see what my options were in response."<sup>165</sup>

As referenced above, many efforts were made to try to ensure that the settlement agreement never surfaced and that neither Mr. Wynn's nor the Company's connection to it was exposed. *First*, the settlement agreement included a non-disclosure provision prohibiting Amy from communicating about the matter. *Second*, neither Mr. Wynn nor the Company were named parties to the settlement agreement. Instead, Attorney Pisanelli formed Entity Y, so that Mr. Wynn and the Company could avoid being named parties to the agreement and their involvement could be cloaked. *Third*, the payments to both Amy and her husband were spread over a course of 10 years. As explained by Attorney Pisanelli, structuring the payments in that manner ensured continued compliance with the confidentiality provision. *Fourth*, no party maintained an original or draft of the agreement. Under the terms of the settlement agreement, the original was to be maintained by the "Law Firm" (at that time named Schreck Brignone PC) and could not be released without express written consent of all the parties, by order of a court, or other governmental body of competent jurisdiction. *Fifth*, KZA, the Company's outside employment counsel put special safeguards into place around its records relating to work on the 2005 settlement and used language in its billing records that characterized its work as "sexual harassment protocol." *Sixth*, the Company never conducted any investigation. *Finally*, no documentation was ever placed in an employee or other centralized file pertaining to Mr. Wynn.<sup>166</sup>

The IEB made multiple attempts to contact Amy through her attorney but did not receive a response. At the outset of the investigation, the IEB sent forms to counsel for Mr. Wynn which

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The Company confirmed to IEB investigators that it did not maintain an employee file for Mr. Wynn at all.

would waive the confidentiality provision in Amy's settlement agreement.<sup>167</sup> Mr. Wynn's attorney responded on March 15, 2018 saying that "Mr. Wynn is not currently in a position to sign the requested confidentiality waivers, since doing so would have collateral consequences in matters wholly unrelated to your investigation or work of the Commission."<sup>168</sup> Therefore, to the investigators' knowledge, the confidentiality provision remains in effect.

#### **D. The Company's General Counsel Marc Rubinstein Learns of the Settlement and Makes Inquiries**

The company's then-general counsel, Marc Rubinstein, was interviewed by IEB investigators. He relayed the following information.<sup>169</sup> Neither the Company's outside counsel (Attorneys Schreck and Kamer) nor any of the Company's three executives with knowledge of the matter at the time (Mr. Wynn, Mr. Schorr, Mr. Nathan) informed the Company's general counsel of the rape or paternity allegation or the settlement negotiations.<sup>170</sup> It was only after the settlement agreement was signed that Attorney Rubinstein discovered an invoice from Attorney Kamer's law firm for work that Attorney Rubinstein did not recognize or authorize.<sup>171</sup> Attorney Rubinstein asked Attorney Kamer about the invoice, and Attorney Kamer referenced the 2005 incident/settlement agreement. Attorney Rubinstein told investigators, "He thought I knew, and I said, 'I don't know the first thing about this. What are you talking about?' And I think at that point he stopped really talking and referred me to Marc Schorr."<sup>172</sup> According to Attorney Rubinstein, when he asked Mr. Schorr about the matter, Mr. Schorr rebuffed his inquiry and told him it was not any of his business.<sup>173</sup>

Attorney Rubinstein then sought advice from outside counsel, Attorney Jerome Coben from Skadden, Arps, Slate, Meagher & Flom LLP. Attorney Rubinstein stated that Attorney

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<sup>167</sup> In the same request, the IEB asked for a waiver of the confidentiality provisions in the 2006 settlement agreement as well (discussed later in this report). Mr. Wynn's response was the same for both requests.

<sup>168</sup> [REDACTED]  
<sup>169</sup> [REDACTED] Information in this section is also derived from Attorney Rubinstein's deposition in the Okada litigation (11/2/17).

<sup>170</sup> Id. [REDACTED]

<sup>171</sup> Id. [REDACTED] Attorney Rubinstein believes he discovered the invoice in late August or early September of 2005. [REDACTED]

<sup>172</sup> Id. [REDACTED]

<sup>173</sup> Id. [REDACTED]

Coben told him to gather more information.<sup>174</sup> At that time, according to Attorney Rubinstein, he became aware that there had been a claim involving Mr. Wynn's relations with an employee, and he may have known of the pregnancy claim, but he was not told of the rape allegation.<sup>175</sup> Attorney Rubinstein told Mr. Schorr that he had consulted with Attorney Coben, and according to Attorney Rubinstein, Mr. Schorr was clearly unhappy.<sup>176</sup> Later, Mr. Schorr told Attorney Rubinstein that he would be allowed to view documents regarding the matter, but that he would have to do so at Attorney Schreck's law office and he would not be allowed to take notes, take photographs, or make copies.<sup>177</sup> Attorney Rubinstein reviewed the file under those circumstances.<sup>178</sup> He told investigators that the file he reviewed contained the settlement agreement itself and a demand letter.<sup>179</sup> Attorney Rubinstein told investigators that the demand letter was "mostly about the paternity."<sup>180</sup> He also indicated that he was only in the room with the documents for five minutes. He indicated that he did not recall seeing the retraction letter or any information regarding the sexual assault allegation.<sup>181</sup>

Attorney Rubinstein contacted Attorney Coben again and told him about the information in the file. He asked Attorney Coben if he needed to advise the Company's board of directors about the matter, and both he and Attorney Coben concluded that disclosure to the board was not required.<sup>182</sup> Attorney Rubinstein told investigators that he did not speak with Attorney Coben about whether to notify the Nevada Gaming Control Board.<sup>183</sup> It is important to note that

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<sup>174</sup> Id. [REDACTED]

<sup>175</sup> Id. [REDACTED]

<sup>176</sup> Id. [REDACTED]

<sup>177</sup> Id. [REDACTED]

<sup>178</sup> Id. [REDACTED]

<sup>179</sup> Id. [REDACTED] The IEB has not been provided with any copy of a demand letter. It is unclear whether Attorney Rubinstein may be mistaken about seeing a demand letter given his quick review of the documents and the passage of time since the event, or whether a demand letter existed at the time but is now unavailable.

<sup>180</sup> Id. [REDACTED]

<sup>181</sup> Id. [REDACTED] There is language in the settlement agreement about the letter of retraction. [REDACTED]  
[REDACTED] It is unclear whether Attorney Rubinstein took notice of this language when he reviewed the document.

<sup>182</sup> The IEB sought to interview Attorney Coben, however his attorney indicated that Attorney Coben had absolutely no recollection of the conversations with Attorney Rubinstein. The Company did produce invoices from Skadden Arps indicating two phone calls between Attorney Rubinstein and Attorney Coben around that time period, but the substance of those conversations was not detailed in the invoices. [REDACTED]

<sup>183</sup> [REDACTED]

Attorney Rubinstein was not informed of the original allegation of a sexual assault at any point, and therefore neither Attorney Coben nor Attorney Rubinstein had the opportunity to take that critical piece of information into consideration when evaluating whether to make a disclosure to the board. Attorney Rubinstein told investigators that "certainly if there was an allegation of criminal misconduct, that it was that serious, I think there would've been an obligation, or at least an inclination to advise at least the Gaming Control Board Chairperson."<sup>184</sup>

According to Attorney Rubinstein, within a few months of his inquiry into the settlement matter, Mr. Wynn told him that he needed Attorney Rubinstein's loyalty to him first and to the Company second.<sup>185</sup> Mr. Wynn gave Attorney Rubinstein the choice of either 1) tearing up his employment contract and working for the Company on an at-will basis, or 2) leaving the company with the severance amount set forth in his employment contract.<sup>186</sup> Attorney Rubinstein told investigators that Mr. Wynn told him he was looking for "a brother and a lawyer."<sup>187</sup> Attorney Rubinstein chose to leave the Company and resigned from his position as general counsel in early 2006.<sup>188</sup>

Attorney Rubinstein did tell investigators that Mr. Wynn's behavior was "always appropriate" in front of him.<sup>189</sup>

#### **E. The Company Fails to Follow Company Policy on Sexual Harassment**

As stated previously, since its formation, the Company's sexual harassment policy required an investigation of all allegations of conduct that amounted to violations of the policy. The 2004 policy in effect at the time of the 2005 events stated that "[a]ll sexual harassment complaints are forwarded to the employee relations department. An immediate, complete, thorough and (to the extent practicable) confidential investigation will be conducted. Upon the completion of such investigation, the employee relations Department will follow up with the employee."<sup>190</sup>

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<sup>184</sup>

Id. [REDACTED]

<sup>185</sup> Id. [REDACTED]

<sup>186</sup> Id. [REDACTED]

<sup>187</sup> Id. [REDACTED]

<sup>188</sup> Id. [REDACTED]

<sup>189</sup> Id. [REDACTED]

<sup>190</sup> [REDACTED]

Amy lodged her complaint not only with the [REDACTED] manager and the [REDACTED] manager for the hotel, but also with Mr. Schorr and Ms. Whennen.<sup>191</sup> The Company policy mandated an immediate and thorough investigation. According to Ms. Whennen, Mr. Schorr told Amy that an investigation would take place.<sup>192</sup> Any *bona fide* investigation would have been conducted by a person, internal or external to the Company, with the ability to remain objective and fair. An investigation would have entailed, at a minimum, interviewing Amy and Mr. Wynn, and obtaining any physical or documentary evidence in their possession. An investigation also would have entailed interviewing other witnesses with potentially relevant information. By failing to conduct any investigation whatsoever, there was no opportunity to determine the facts of the incident at the time, or to evaluate whether other employees may be at risk of sexual misbehavior, or to gather information to allow the audit and compliance committees to evaluate whether the Company faced legal risk, financial risk, or risk of regulatory action. Moreover, even if an investigation revealed that the encounter between Amy and Mr. Wynn was "consensual," as Mr. Wynn has insisted,<sup>193</sup> the failure to investigate the allegation deprived the Company of the ability to evaluate whether consensual sexual conduct between a manicurist and the Company's Chairman and CEO raised an actual or potential conflict of interest under the Company's Code of Business Conduct and Ethics. The failure to investigate was contrary to the Company's "zero tolerance" sexual harassment policy.

In addition, there is no evidence that Mr. Schorr, Mr. Nathan, Attorney Rubinstein, or anyone else at the Company required that Mr. Wynn receive training on Company policy. Nor is there any evidence that the Company limited Mr. Wynn's access to the Company's spa or salon employees as a result of the rape accusation. In his interview with IEB investigators, Attorney Pisanelli stated that following the 2005 incident, "someone communicated to [him] that [Mr. Wynn] had been counseled on it so [he] put, like, a one-sentence note to the file that [Mr. Wynn] had been counseled or something of that sort . . . ." However, the "note to the file" referenced by Attorney Pisanelli was apparently maintained by Attorney Pisanelli, not by the Company, and it

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<sup>191</sup> According to the complaint filed by the [REDACTED] manager [REDACTED], Amy also lodged her allegation with the [REDACTED] manager. The Company disputes the allegations in the complaint and has moved to dismiss it.

<sup>192</sup> [REDACTED]

<sup>193</sup> [REDACTED]



was not placed in any sort of personnel or other centralized file for Mr. Wynn. When interviewed, Attorney Pisanelli, the author of the note to file, could not recall any specific information relating to "counseling." Nor did he recall the note to file itself. He told investigators the following:

*I remember there was discussion in the group that I was dealing with that Steve needed to be counseled or something like that. I don't have a recollection that I would be privy to discussions about punishment or anything of that sort. But I do remember that there was some discussion in between that level of high ranking managers, and my best recollection is I put a one-sentence note to file that he had been counseled or something of that sort....And it was confirmed to me that it happened. That's why I put the memo on the file. If it didn't happen, I wouldn't have done it. Someone communicated to me that he had been counseled on it.*<sup>[194]</sup>

When asked if he knew who communicated that to him, Attorney Pisanelli said, "No, just I know it was from that core group that I described to you."<sup>195</sup> A note to file of such brevity, based on such minimal information, would serve no corporate purpose, especially where it was apparently retained in Attorney Pisanelli's files, not in Company files. These inadequacies contributed to regulators' inability to detect the allegations of misbehavior.

Attorney Sinatra, who became general counsel for Wynn Resorts in 2006, told IEB investigators that Attorney Tourek, general counsel for Wynn Las Vegas at the time, had claimed to have trained Mr. Wynn on the Sexual Harassment Policy.<sup>196</sup> There are no records to corroborate this, and Attorney Tourek told IEB investigators that at one point he thought he had trained Mr. Wynn on the policy, but that he now (at the time of the IEB interview) had no recollection of Mr. Wynn being trained on the policy.<sup>197</sup>

During Mr. Wynn's deposition in the Okada litigation on October 25, 2017, he testified that he was not familiar with the Company's Sexual Harassment/Zero Tolerance Policy, saying, "Not the detail, no I was not."<sup>198</sup> When asked if he received training on the policy, he stated, "I

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195 Id.

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don't need to receive training," and then when he was asked again if he had received training, he stated, "Not that I'm aware, no."<sup>199</sup>

**F. No One at the Company Offers any Explanation to Salon Employees about Amy's Abrupt Departure from Her Job**

The IEB asked relevant witnesses whether senior management at the Company ever communicated back to the lower level salon staff with an explanation about what happened to Amy. After all, she abruptly left work after being visibly upset about having to provide a salon service for Mr. Wynn, and she never returned to work again.<sup>200</sup> The IEB investigation showed that some of her co-workers were confused and worried, given Amy's sudden disappearance from the workplace. No evidence surfaced in the investigation to show that management at the Company ever provided any explanation to salon staff. The IEB recognizes that certain aspects of Amy's separation from the Company involved a confidential personnel issue; nonetheless, the Company could have done more to reassure her co-workers, who were left to speculate about Amy's unexplained departure.

**G. No One at the Company Informs the Board of Directors in 2005 of the Settlement**

The Company's board of directors was not collectively informed in 2005 of the initial rape allegation, or of Mr. Wynn's characterization that he engaged in consensual sexual relations with a subordinate employee, or of the eventual \$7.5 million settlement agreement involving Mr. Wynn and Amy.<sup>201</sup>

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<sup>199</sup> Id. [REDACTED]

<sup>200</sup> Given that Mr. Schorr and Mr. Nathan declined to be interviewed by the IEB, IEB investigators were unable to ask them directly about any further conversation with salon employees.

<sup>201</sup> [REDACTED]

[REDACTED] Mr. Wynn also testified in his October 5, 2017 sworn deposition (p. 813) in the Okada litigation that he told John Moran (Wynn Resorts board member from 2002 to 2012), and may have told Linda Chen (Wynn Resorts board member from 2007 to 2012, Wynn Macau board member since September of 2009) or Allan Zeman (Wynn Resorts board member from 2002 to 2012, Wynn Macau board member since its founding) about the 2005 matter. Ms. Chen testified in a sworn deposition in the Okada litigation that she did not recall being so informed by Mr. Wynn. [REDACTED]

[REDACTED] Mr. Zeman testified similarly. [REDACTED]

[REDACTED] Mr. Moran was not similarly deposed at that time as his doctor provided a letter to counsel on June 13, 2016, stating that he was "unable to sit for a deposition due to his current medical status."

Attorney Rubinstein considered informing the board and consulted with outside counsel on the matter. Attorney Rubinstein told investigators that he consulted with Attorney Coben and "came to the conclusion that I was not under a legal or ethical obligation to disclose the matter to the board."<sup>202</sup> As has already been discussed, Attorney Rubinstein and Attorney Coben did not have the full and accurate context of the 2005 settlement (specifically, they did not know of the sexual assault allegation), and therefore the opinions of general counsel and outside corporate counsel not to inform the board were based on an incomplete and inaccurate factual scenario. However, Attorney Rubinstein and Attorney Coben did have information that the CEO and Chairman of the Company allegedly engaged in sexual conduct with a subordinate employee, raising conflict of interest questions and implicating the Company's Code of Business Conduct and Ethics.<sup>203</sup> Consequently, it is concerning that general counsel and outside counsel for the Company did not recommend notification to the board (via disclosure to the audit committee) or any action at the corporate level, or that the general counsel did not take the further step to address with the board the dysfunction that general counsel for the Company was not apprised of the matter in the first place. In addition, Ms. Wynn provided notes to the IEB memorializing a conversation she had with Mr. Nathan in 2009 which indicate that Mr. Nathan told her "that he had argued that he felt the [2005] charge was serious enough to be brought before the board but that he was overruled."<sup>204</sup> The notes indicate that Mr. Nathan said that "Frank [Schreck] and Barry [Slotnick] said it would create undue damage to the company."<sup>205</sup> Given that Mr. Wynn, Mr. Nathan, and Mr. Schorr declined to be interviewed by the IEB (none of them are with the Company anymore), the IEB cannot shed further light on their decisions not to inform the board.

#### **H. The Company Does Not Disclose the Settlement to the NGCB in 2005**

No evidence surfaced during this investigation showing that in 2005, anyone with knowledge of Amy's allegations or the settlement disclosed the matter to the Nevada Gaming Control Board.<sup>206</sup>

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Id.

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The IEB was unable to obtain confirmation of this directly from the NGCB.

When Attorney Schreck was deposed in the Okada litigation on November 3, 2017, he was asked about how the 2005 sexual assault allegation and settlement related to Mr. Wynn's suitability.

[Question]: *When you say that you were providing regulatory advice, did this allegation from [Amy] raise issues concerning either Mr. Wynn's or the company's suitability?*

[Schreck]: *No.*

[Question]: *So this was not, from your perspective, a gaming compliance issue?*

[Schreck]: *It was a personal indiscretion and bad judgment.*<sup>[207]</sup>

Mr. Wynn was asked in his October 25, 2017 deposition in the Okada litigation about reporting to the Nevada Gaming Control Board and the exchange was as follows:

[Question]: *Did you tell the Gaming Control Board anything about this?*

[Mr. Wynn]: *No.*

[Question]: *Why not?*

[Mr. Wynn]: *Because it was a nonevent, it was false, it was a lie. Why would I have to – why would I have to prolong a fabrication?*<sup>[208]</sup>

The IEB notes that the NGCB issued a ten-count complaint against the Company on January 25, 2019. Count One of the complaint, to which the Company stipulated, cited the Company for its failure to initiate and/or conduct an investigation into the 2005 allegation. The Nevada Gaming Commission recently assessed a fine in the amount of \$20 million against the Company for the ten-count complaint.

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### **IEB's Findings from Events in 2005**

#### **➤ *Company executive knowledge***

- The investigation has revealed that the following Company executives were aware **in 2005** that Amy claimed that she was raped by Mr. Wynn. None of these executives are currently employed by the Company.
  - Stephen Wynn (former CEO and Chairman of the Board)
  - Marc Schorr (former chief operating officer of Wynn Resorts, president and CEO of Wynn Las Vegas)
  - Arthur Nathan (former senior vice president and chief human resources officer of Wynn Las Vegas)
  - Doreen Whennen (former vice president of hotel operations for Wynn Las Vegas)
- Additionally, in 2005, the general counsel, Marc Rubinstein (who is no longer employed by the Company), learned of a fact pattern that Mr. Wynn had engaged in sexual activity with a subordinate employee, activity which was depicted to him as consensual, resulting in a \$7.5 million settlement.

### **Significant Issues from Events in 2005**

Below are the issues which the IEB suggests the Commission consider in evaluating the ongoing suitability of Wynn Resorts, Limited as an entity qualifier for the Massachusetts license:

- The Company failed to apply certain of its own policies and procedures to Mr. Wynn, the highest ranking employee at the Company.
- Certain high ranking Company executives who knew about the rape allegation made by an employee against Mr. Wynn failed to follow Company policy mandating an investigation.
- No reports were made to the Company's board of directors, nor to its audit or compliance committees, nor to regulators of the allegation of rape made against Mr. Wynn, or of Mr. Wynn's alleged sexual contact with a subordinate employee, or of any potential risks to the Company's employees.
- The Company failed to train Mr. Wynn regarding the Company's "zero tolerance" sexual harassment policy.

- The Company failed to document and record a sexual misconduct allegation made against Mr. Wynn in a personnel or other centralized file.
- The Company failed to engage in a meaningful inquiry or provide informed consent to legal representation of both Mr. Wynn and the Company by the same outside counsel, in a situation where Mr. Wynn was accused of sexual misconduct involving an employee.
- There was a failure by those aware of the matter to take appropriate and adequate steps to safeguard employees from the potential risk of sexual misconduct.

## V. THE 2006 SETTLEMENT

***Summary: A former cocktail server at Wynn Las Vegas made a complaint to Mr. Nathan, head of the Company's human resources department, that she had been "wrongfully engaged in a sexual relationship" with Mr. Wynn. The matter was reported to Attorney Kevin Tourek in the Wynn Las Vegas legal department. No internal investigation was conducted by the Company. Instead, a \$975,000 settlement agreement was entered into between the complainant and Mr. Wynn. The complainant signed a retraction denying her allegation.***

### A. Mr. Wynn Enters Into a Settlement Agreement with a Former Cocktail Server for \$975,000

In response to the IEB's requests for documents and information as part of this investigation, the Company provided the IEB with a copy of a settlement agreement dated December 7, 2006.<sup>209</sup> At the time the settlement agreement was executed, Attorney Sinatra had been serving as general counsel of Wynn Resorts for nine months, following Attorney Rubinstein's resignation in March of 2006.<sup>210</sup>

The parties to the 2006 settlement agreement were "Beth" (a former cocktail server at Wynn Las Vegas), two individuals believed to be Beth's parents, and Mr. Wynn. Attorney Barry

<sup>209</sup> [REDACTED]

<sup>210</sup> Attorney Rubinstein told investigators that he had no discussion with Attorney Sinatra about the 2005 settlement agreement as part of the transition process to the new general counsel. [REDACTED]

[REDACTED] The IEB reviewed Attorney Sinatra's employment contracts, which showed that her duties as General Counsel included "the supervision of legal and compliance efforts" of the Company. IEB investigators asked Attorney Sinatra whether her responsibilities as general counsel included oversight of the Company's compliance efforts. Attorney Sinatra responded, "So, no. Compliance actually didn't report to me." [REDACTED]

Slotnick signed the settlement on behalf of Mr. Wynn. The settlement agreement called for \$975,000 to be paid to Beth and her parents in the lump sums of \$325,000 payable to Beth on or before January 15, 2007; to one of her parents, on or before May 15, 2007; and to her other parent, on or before September 15, 2007.<sup>211</sup> The settlement agreement contained a confidentiality provision, a release of claims against Mr. Wynn and the Company, a non-disparagement provision, a "no admission" provision (which included a clause that Beth and her parents agreed that any previously alleged conduct related to the agreement was never nonconsensual), and a liquidated damages provision in the amount of \$1 million for any breach by Beth or her parents of the agreement.<sup>212</sup> The settlement agreement also included an affidavit from Beth. Beth's affidavit stated:

*I make no claim that I was ever, at any point in time, forced, coerced, compelled, pressured, intimidated, or influenced by, in any manner whatsoever, any member and/or employee of the Wynn Group, including, but not limited to, Mr. Steven (sic) Wynn, to have any contact or relations with anyone, including any member and/or employee of the Wynn Group, including but not limited to, Mr. Wynn.*

The IEB was able to obtain only limited information regarding the underlying circumstances of the 2006 settlement agreement. Various factors contributed to the limited availability of information. For example, Mr. Wynn declined the IEB's requests for an interview. In addition, Mr. Wynn declined to waive the confidentiality provision of the settlement agreement, so the confidentiality and liquidated damages provisions, to the IEB's knowledge, remain in effect. The IEB made repeated attempts to contact Beth through her attorney, but the attorney responded that Beth was not at liberty to speak to investigators. A further inquiry to Beth's attorney by investigators did not result in a response. After yet another inquiry by the IEB, Beth's attorney told the IEB that she could no longer represent Beth because Mr. Wynn has sued her (the attorney) personally.<sup>213</sup>

Although information establishing the precise nature of the circumstances underlying the 2006 settlement was limited, the IEB was able to obtain some information that sheds light on its factual underpinnings.

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<sup>211</sup> [REDACTED]

<sup>212</sup> *Id.* [REDACTED]

<sup>213</sup> *Steve Wynn v. [REDACTED]* Case [REDACTED] (D. Nev.) (defamation action).

**B. In 2006, Chief Human Resources Officer Arthur Nathan and General Counsel of Wynn Las Vegas Kevin Tourek Have Knowledge of an Allegation by a Former Employee that She was "Wrongfully Engaged in a Sexual Relationship" with Mr. Wynn**

The IEB reviewed emails demonstrating that Company executives in the human resources and legal departments had knowledge that in 2006, Beth alleged having been "wrongfully engaged in a sexual relationship" with Mr. Wynn.<sup>214</sup> On October 28, 2006, less than two months after resigning from the Company, Beth emailed Mr. Nathan, the then-chief human resources officer for Wynn Las Vegas, with her name in the subject line with the message: "Hello again, Mr. Nathan. Someone is urgently trying to contact me regarding the matters we discussed this past Friday. Why?"<sup>215</sup> Mr. Nathan responded to Beth as follows: "I don't know. Let me know if yo[u] find out."<sup>216</sup>

Mr. Nathan then forwarded the email communication to Attorney Kevin Tourek, vice president and general counsel for Wynn Las Vegas at the time, with the message, "FYI." Later that day, Beth emailed Mr. Nathan again with the message:

*The person who urgently tried contacting me was a dear friend of mine who you and Mr. Wynn are familiar with. After speaking with him via telephone over the weekend, and after being presented with several scenarios of consequences that could possibly result if I were to file my complaint with the Nevada Equal Rights Commission, due to its graphic and damaging nature, I feel threatened and endangered. I believe that I was wrongfully engaged in a sexual relationship with Steve Wynn by Steve Wynn and it needs to be made right. I intend to explore the value of legal advice to assist me with making this complaint.*<sup>[217]</sup>

Mr. Nathan forwarded this email to Attorney Tourek as well, with the message, "Any suggestions on my (sic) if/how I should respond?"<sup>218</sup> Attorney Tourek responded, "Let's discuss in the morning – do you know who called her?"<sup>219</sup> To this, Mr. Nathan wrote, "I have no idea and I didn't ask Marc [Schorr] or [Mr. Wynn] if they know – it might have been one of Drai's"<sup>[220]</sup>

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<sup>214</sup> [REDACTED]

<sup>215</sup> Id.

<sup>216</sup> Id.

<sup>217</sup> Id.

<sup>218</sup> Id.

<sup>219</sup> Id.

<sup>220</sup> In partnership with the Company, Victor Drai owned and managed nightclubs in the Company's Las Vegas properties.



associates – [Mr. Wynn] said that she was with an attorney named Sadek (I don't know who that is) so it could have been him. I haven't told Marc [Schorr] about this but will in the morning – he and [Mr. Wynn] wanted the circle of people in-the-know on this to be small (you and I are the only other ones). I will call you in the morning. Thanks."<sup>221</sup>

Mr. Wynn, Mr. Nathan, and Mr. Schorr declined the IEB's requests to be interviewed (none of them are with the Company anymore), so no information was able to be obtained from them regarding this correspondence.

Attorney Tourek (who is no longer with the Company) told IEB investigators that he had no recollection of these emails to, from, or regarding Beth.<sup>222</sup> He stated that usually his process was to report this sort of matter up the Company's chain of command, saying, "my normal practice was to tell everybody," but that since he could not even recall the emails, he could not recall what, if any, internal conversations he had or what action, if any, he took.<sup>223</sup> Attorney Sinatra has denied having knowledge of Beth's allegations in 2006.<sup>224</sup>

The IEB requested that the Company provide a summary of the underlying conduct/allegations that led to the 2006 settlement agreement. In its initial response, the Company sent a letter to the IEB on February 20, 2018 which included the statement "the Company was first made aware of the . . . 2006 Settlement Agreement[] on January 30, 2018. Upon information and belief [the Company] has no knowledge of the underlying conduct/allegations that led to the 2006 settlement agreement." The Company's initial response further stated that the Company has no knowledge of how the settlement was paid. In a supplemental response dated April 20, 2018, the Company provided a portion of notes created by Elaine Wynn in 2009. Ms. Wynn's notes state:

*[Arte Nathan] told me that the worst part of his job throughout all the years that he worked for us was dealing with the repeated incidents of harassment that involved Steve [Wynn]. He claims they started in Atlantic City. He said there was a pattern of unethical behavior on the part of the chairman [Mr. Wynn] that was inappropriate and even illegal. He agonized over his own role in this and felt compromised because of his family's history with the Wynns dating back to their childhood. He said that another incident occurred as he was leaving the company when Andrew [Pascal, Elaine Wynn's nephew] was already president. They did*

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<sup>221</sup> Id.

<sup>222</sup> [REDACTED]

<sup>223</sup> Id. [REDACTED]

<sup>224</sup> [REDACTED]

*not share it with Andrew because of his relationship to me [Ms. Wynn].*  
(Emphasis added by Attorney Tourek<sup>225</sup> in the supplemental response to the IEB).

The April 20, 2018 supplemental response from the Company went on to state that "Mr. Nathan resigned from Wynn Las Vegas effective December 1, 2006."<sup>226</sup> The 2006 settlement agreement is dated December 6, 2006. As such [the Company] believes Mr. Nathan was referring to the 2006 settlement agreement when he referred to "another incident as he was leaving the company." The letter also adds "Ms. Wynn never reported the substance of her conversation with Mr. Nathan, including this [other incident] from 2006, to the Company.

Mr. Nathan, in his deposition in the Okada litigation on October 3, 2017, appeared to be confusing the timeframe of the 2006 events involving Beth or possibly conflating the 2005 events involving Amy with the 2006 events involving Beth. He described a woman coming into his office telling him that she had been raped by Mr. Wynn and that she believed she was pregnant.<sup>227</sup> He recalled that she was crying and that he told her that he took the allegations seriously and that he would follow up appropriately.<sup>228</sup> He did not recall specifically whom he told about the report, but believed it was either Mr. Schorr, or the corporate counsel, or both.<sup>229</sup> Mr. Nathan then went on to describe the following: "I got a visit – and whether it was a call or a personal visit, I don't recall – from one of Steve Wynn's attorneys, telling me that the incident had been reported and it is being handled at another level. You no longer have to concern

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<sup>225</sup> The Company brought Mr. Tourek back temporarily in 2018.

<sup>226</sup> The Company later clarified that Mr. Nathan notified the Company of his resignation on December 1, 2006, and his resignation was effective on March 26, 2007.

<sup>227</sup> [REDACTED] In this deposition in the Okada litigation on 10/3/17, Mr. Nathan was asked about a 2005 incident. In a later deposition in the Okada litigation on April 10, 2018, he was asked to further elaborate on this incident, and he testified that he believed it was in 2006, and that the incident was alleged to have occurred at a party at Victor Drai's house during a period of time when the complainant worked for the Company. [REDACTED]

[REDACTED] The date of such a party has not been able to be established. Attorney Pisanelli told IEB investigators that he learned about the 2006 settlement from Mr. Nathan's testimony, which Attorney Pisanelli described as "confused" saying, "I think he's conflating different events." [REDACTED]

<sup>228</sup> [REDACTED]

<sup>229</sup> Id. [REDACTED]

yourself with this."<sup>230</sup> Mr. Nathan identified the attorney as Barry Slotnick.<sup>231</sup> When asked if the Company conducted an investigation, Mr. Nathan responded, "I don't know."<sup>232</sup>

In Mr. Nathan's deposition in the Okada litigation on April 10, 2018, he testified regarding the 2006 settlement agreement, saying:

[Nathan]: *I was visited by either Mr. Tourek or Mr. Slotnick, the attorney, and told that this would be handled at a different level, and that the other attorneys would take over the case and I had no further responsibility to it, nor was I to do any more with it.*

[Question]: *Did you voice an objection to the process?*

[Nathan]: *I don't recall. I don't think so. Under the circumstances I probably didn't.*

[Question]: *Did it concern you that it was being taken out of your hands?*

[Nathan]: *It was not normal.*

[Question]: *I mean, the normal course would have been for you or someone in your department to carry out an investigation, correct?*

[Nathan]: *That's correct.*

[Question]: *And as you sit here today, you don't know if anyone in your department carried out an investigation?*

[Nathan]: *We did not.*

[Question]: *You did not?*

[Nathan]: *I was instructed not to.*

[Question]: *Do you know if the matter was resolved?*

[Nathan]: *Yes. But I don't know how it was resolved.*

[Question]: *Okay. How did you learn it was resolved?*

[Nathan]: *Either Mr. Tourek or Mr. Slotnick told me it had been resolved, and that was the extent of my knowledge of it.*

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<sup>230</sup> Id.

<sup>231</sup> Id.

<sup>232</sup> Id.

Attorney Slotnick declined the IEB's requests for an interview.

[Question]: *That was it?*

[Nathan]: *That was it. That it's been resolved.*<sup>[233]</sup>

The Company was unable to produce any information or documents showing that an investigation was conducted, or that the matter was reported to the audit committee, or that Mr. Wynn received any training, counseling, or disciplinary action as a result of Beth's allegation.

Mr. Wynn testified in an April 4, 2018 deposition in the Okada litigation.<sup>234</sup> In that deposition, Mr. Wynn was asked about the 2006 settlement agreement with Beth, and he testified that he had forgotten about it.<sup>235</sup> He testified, "I've had a great deal of problems remembering what we referred to as this '[Beth] settlement.' It was a long time ago, and I have lost the details of that -- you know, I don't have a clear memory of it, and unfortunately, I can't say -- I can't say anything but that because it's the truth."<sup>236</sup>

Mr. Wynn was also asked about who Beth was.

[Question]: *Mr. Wynn, let's go into who [Beth] is. Who is she?*

[Mr. Wynn]: *Well, I've learned that she is the woman with whom Mr. Slotnick made the settlement 12 years ago or so.*

[Question]: *Was she an employee of Wynn Resorts?*

[Mr. Wynn]: *I don't know.* [REDACTED]

[Question]: *Having read the settlement, it says that she was an employee at Wynn Resorts. Do you recall that now?*

[Mr. Wynn]: *I've only learned of the fact that she was an employee of the Wynn after this case was started in recent months. I did not know that then.*<sup>[237]</sup>

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Id. [REDACTED] In Mr. Wynn's deposition in the Okada litigation on October 25, 2017, at [REDACTED], he was asked with respect to the 2005 settlement, "Have you ever settled any other claims of sexual contact during the course of your career?" He responded, "I personally don't remember. Not -- I'm not remembering anything."

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Id. [REDACTED]

The following exchange in the deposition related to the underlying allegations that resulted in the 2006 settlement agreement:

[Question]: *What did [Beth] say happened that caused there to be a settlement, Mr. Wynn?*

[Mr. Wynn]: *What I know about what [Beth] said are things I learned recently. It would be inaccurate for me to say that I remember what [Beth] said at the time. I did not – I do not remember. This matter – this matter either didn't take place or it was obscure in my memory enough that I did lose it but it was brought back to me sharply in the last several months.*

[Question]: *And what did you learn in the last several months?*  
[Mr. Wynn was then advised by counsel not to respond to the question with anything that had been told to him by his attorneys.]

[Mr. Wynn]: *Well, everything that I know about the case has been told to me by my attorney.*<sup>[238]</sup>

In his April 4, 2018 deposition in the Okada litigation, Mr. Wynn was also asked about Attorney Slotnick's role in the matter and the payment involving the 2006 settlement.

[Question]: *You said Mr. Slotnick handled the settlement. Was he representing you?*

[Mr. Wynn]: *Yes.*

[Question]: *Was he representing Wynn Resorts?*

[Mr. Wynn]: *That's a technical question, and I don't know the difference. I thought he was representing – I've learned that he did the settlement in representing me . . . but your question is technical. I can't testify to –*

[Question]: *It's not technical, Mr. Wynn. I'm asking you from your understanding. You said Mr. Slotnick represented you. I was asking you if he also represented Wynn Resorts.*

[Mr. Wynn]: *I don't know that he represented Wynn Resorts. I believe he represented me.*

[Question]: *Thank you. Did you pay his legal fees?*

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<sup>238</sup> Id. [REDACTED]

[Mr. Wynn]: *Yes.*

[Question]: *The amount of the settlement in here is just short of a million dollars. Did you pay that amount?*

[Mr. Wynn]: *\$900,000 was paid by me.*

[Question]: *I think it was \$975,000 to be exact.*

[Mr. Wynn]: *Well, I've learned that it was three people got the money, each \$300,000.*

[Question]: *And that money was paid by you?*

[Mr. Wynn]: *Yes.*

[Question]: *Personally?*

[Mr. Wynn]: *Yes.*<sup>[239]</sup>

### **C. The Complainant Contacts Attorney Slotnick after the *WSJ* Article is Published**

The Company provided the IEB with an email that Beth sent to Attorney Slotnick on January 27, 2018 (the day after the *WSJ* article was published).<sup>240</sup> The email stated:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Four days later, on January 31, 2018, Beth sent another email to Attorney Slotnick which stated:<sup>241</sup>

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>239</sup>

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<sup>241</sup> Id.

[REDACTED]

According to James Stern, the Company's executive vice president of corporate security and investigations, shortly after being notified that Beth contacted Attorney Slotnick, Mr. Stern contacted the FBI making a report of extortion by Beth.<sup>242</sup> Mr. Stern has informed the IEB that he is not aware of any open FBI investigation regarding Beth.<sup>243</sup> IEB investigators spoke with the FBI supervisory agent, who confirmed that FBI investigators spent a day or two on the report of extortion but after consulting with the U.S. Attorney's Office, the FBI determined to close out the investigation.

On February 9, 2018, an attorney for Beth sent a letter to Attorney Slotnick notifying him that she was representing Beth and requesting that he advise Mr. Wynn not to contact Beth directly.<sup>244</sup> The letter from Beth's attorney went on to note that Mr. Wynn's public statements denying that he had sexually harassed or assaulted anyone are "outrageously false." The letter further stated that Beth "was pressured into continuing a sexual relationship with Mr. Wynn" and that she complained about it to the Wynn human resources department. The letter went on to complain that "HR sent [Beth] to you, to wrap up a private, confidential, one-sided settlement agreement with her even though she was not represented by counsel. That agreement contains unlawful provisions, such as requiring her never to testify in any court about her ordeal, and requiring her to sign a false affidavit to protect Mr. Wynn."<sup>245</sup>

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<sup>242</sup> [REDACTED]

<sup>243</sup> Id. [REDACTED]

<sup>244</sup> [REDACTED]

<sup>245</sup> Id.

### **IEB's Findings from Events in 2006**

#### ➤ **Company executive knowledge**

- The investigation has revealed that the following Company executives were aware **in 2006** that Beth made an allegation of having been "wrongfully engaged in a sexual relationship" with Mr. Wynn. None of these executives are still employed by the Company.
  - Stephen Wynn (former CEO and Chairman of the Board)
  - Arthur Nathan (former senior vice president and chief human resources officer of Wynn Las Vegas)
  - Kevin Tourek (former vice president and general counsel for Wynn Las Vegas)<sup>246</sup>
- There is also some evidence that Mr. Schorr, chief operating officer for Wynn Resorts at the time (he is no longer with the Company), was aware of the allegation.<sup>247</sup>
- Additionally, Attorney Tourek told investigators that he had no specific recollection of reporting the 2006 matter to Attorney Sinatra, who was senior vice president and general counsel of Wynn Resorts at the time, but he indicated that in the normal course, he would have reported up the chain of command. Attorney Sinatra denied any knowledge. (Both Attorney Tourek and Attorney Sinatra are no longer with the Company).

### **Significant Issues from Events in 2006**

Below are the issues which the IEB suggests the Commission consider in evaluating the ongoing suitability of Wynn Resorts, Limited as an entity qualifier for the Massachusetts licensee:

- The Company failed to apply certain of its own policies and procedures to Mr. Wynn, the highest ranking employee at the Company.

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<sup>246</sup> Attorney Tourek told IEB investigators that he did not recall the allegations. The documentary evidence described above demonstrates his knowledge in 2006.

<sup>247</sup> Mr. Schorr declined to speak with IEB investigators.



- Certain high ranking Company executives who knew about the allegation lodged by an employee of having been "wrongfully engaged in a sexual relationship" with Mr. Wynn failed to follow Company policy mandating an investigation.
- No reports were made to the Company's board of directors, nor to its audit or compliance committees, nor to regulators of the employee's allegation of having been "wrongfully engaged in a sexual relationship" with Mr. Wynn.
- There was continued failure by the Company to train Mr. Wynn on the Company's "zero tolerance" sexual harassment policy.
- The Company failed to document the events and record them in a personnel or other centralized file.
- There was a failure to evaluate whether the advice and/or participation of outside counsel regarding the 2006 settlement was unburdened by a potential conflict of interest.
- There was a failure by those aware of the matter to take appropriate and adequate steps to safeguard employees from the potential risk of sexual misconduct.

## VI. THE 2008 SETTLEMENT

***Summary: The attorney for a previously terminated employee from the cocktail services department sent the Company a demand letter and a draft complaint alleging, among other things, that the employee had a previous "intimate relationship" with Mr. Wynn while she was a subordinate employee for Mr. Wynn at [REDACTED] before the creation of the Company. A settlement agreement in the amount of \$700,000 was reached between the Company and the former employee. There is no evidence that an internal investigation was conducted. The complainant signed an affidavit disavowing any "sexual relationship" with Mr. Wynn; however she informed IEB investigators that she did have a consensual sexual relationship with him and that she signed the affidavit of disavowal under duress.***

In response to the IEB's requests for information, the Company provided a copy of a settlement agreement from 2008.<sup>248</sup> The parties to the 2008 settlement agreement were Wynn

<sup>248</sup> [REDACTED]

Las Vegas and "Connie." The Company also provided the IEB with a demand letter and a draft complaint sent to the Company by Connie's attorney.<sup>249</sup>

The IEB requested that the Company provide a summary of the circumstances behind the 2008 settlement agreement. In response, the Company informed the IEB that Connie had been placed on administrative leave in January of 2006 and then terminated from her employment at Wynn Las Vegas in January of 2007. The Company detailed its reasoning for her administrative leave and subsequent termination, stating:

*In December of 2006, Wynn Las Vegas decided that [Connie] would never be able to resume her duties at Wynn Las Vegas and elected to terminate its employment relationship with [Connie] effective January 9, 2007. From the date of her termination until the execution of the 2008 settlement agreement, Wynn Las Vegas attempted to negotiate a severance/settlement agreement with [Connie] on several occasions. During this period, [Connie] was represented by five different attorneys. [Connie] demands included a multi-million dollar severance payment. The Company always believed that [Connie] was entitled to a severance payment but not in the amount sought by [Connie.] Mr. and Mrs. Wynn had expressed that the stresses of [Connie]'s job were partially to blame for the decline in [Connie]'s mental stability. After two years of negotiations, Wynn Las Vegas settled with [Connie] for \$700,000 (\$100,000 of which was paid to her lawyers) on December 10, 2008.*

The Company provided the IEB with a copy of the transcript of a sworn statement given by a neighbor of Connie's. The Company arranged for the statement to be taken on October 18, 2008, at the law offices of KZA. In the statement, the neighbor said that he and Connie had a conversation outside of their homes. The neighbor's statement called into question Connie's motives and credibility.<sup>250</sup> The neighbor's sworn statement included the following:<sup>251</sup>

*[Connie] had made a comment to me that she had not paid her mortgage for approximately seven months. And she had asked me what I thought. And, and I really didn't comment. I just thought that, gee, that's not good. So, then she went to elaborate and tell, and she began to tell me, and I was surprised because I don't know her that well. But she just began to tell me that she had been offered a severance package. She mentioned the amount of \$250,000. She had said that, that she was owed much more than that. She was very unhappy that they were letting her go. And the next thing I knew that I found a bit offensive to me was that she had said, the only reason I'm not getting what I wanted is because I didn't*

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*suck Steve Wynn's cock. And that was her thing to me. Well, automatically I was surprised, because I, I said, what? Are you kidding me? You mean to tell me you were sexually harassed? And she told me, no, I wasn't. However, if that's going to get me more money, then that's what it's going to take. And that was basically the gist of the conversation.*

Soon after the neighbor's statement was taken, Connie's attorney sent the demand letter, dated November 26, 2008, to Attorney Scott Abbott from KZA. The demand letter was accompanied by a draft complaint. The demand letter stated that Connie had "authorized one last attempt to settle this case" for the sum of \$850,000. The demand letter also stated that the complaint would be filed on December 5, 2008, unless the case was settled by that time. The demand letter further stated that once the complaint was filed, the settlement demand would increase to \$1.3 million.<sup>252</sup> Attorney Abbot forwarded the demand letter and draft complaint via email that same day to Attorney Tourek, general counsel at Wynn Las Vegas.<sup>253</sup>

The draft complaint included the following "General Allegations:"

- *That the plaintiff began working [REDACTED] where Defendant Steven (sic) Wynn was CEO, [REDACTED]*
- *While [Connie] was on the job as an employee [REDACTED] Steven (sic) Wynn, CEO of Mirage Resorts [REDACTED] repeatedly propositioned her.*
- *After being relentlessly pursued for several months, she engaged in an intimate relationship with Steve Wynn which lasted approximately one year.*
- *Plaintiff ended the intimate relationship with the Defendant, Steven (sic) Wynn. Thereafter Steven (sic) Wynn promised that he would always take financial care of the Plaintiff, . . . which promise[] the Plaintiff accepted.*
- *Thereafter the Plaintiff and Defendant Steven (sic) Wynn maintained their professional relationship, and a friendship.*

The complaint went on to assert additional claims related to Connie 's employment and termination, including allegations that agents and employees of Mr. Wynn had interfered with her ability to get another job and that at a meeting Mr. Wynn had physically pushed her out of his office.

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252 [REDACTED]

253 [REDACTED]

Ultimately, a settlement was reached and signed on December 10, 2008 by the parties (Connie and Wynn Las Vegas).<sup>254</sup> The agreement provided that Connie was to be paid \$100,000 by January 9, 2009, and \$600,000 by February 9, 2009. The 2008 settlement agreement also contained a release of claims provision and a confidentiality provision containing the following language: "[Connie], her spouse, representatives, and all individuals described as Releasors in Paragraph 6 above hereby, as well as Stephen A. Wynn, Elaine P. Wynn, Kim Sinatra, and Kevin Tourek, agree, covenant and warrant to keep all of the matters pertaining to or encompassed within this Agreement, its contents, and the terms and conditions of the Agreement CONFIDENTIAL."<sup>255</sup> The confidentiality provision specifically prohibits disclosure of the November 26, 2008 demand letter and draft complaint, and it required that Connie and her attorney destroy all copies of those documents. The settlement agreement contains a liquidated damages provision in the amount of \$250,000 for any breach of the agreement. The settlement agreement also includes an affidavit signed by Connie and dated December 10, 2008. Paragraph 5 of Connie's affidavit states:

*During all of the time I have known Stephen A. Wynn and Elaine P. Wynn, we have only maintained an employment relationship and a friendship. At no time did we ever engage in any sexual relationship. I disavow any statements to the contrary attributed to me or by any other person.*

The IEB reviewed invoices from the law firm of KZA for work performed on the 2008 settlement agreement.<sup>256</sup> The KZA invoices showed that Attorneys Kamer and Abbott performed work on the matter on December 8 and 9, 2008. The summaries of work from KZA show that Attorney Sinatra was present in a meeting on December 8, 2008 concerning this matter with Attorneys Kamer, Abbott, Slotnick, and Tourek. The summaries of work from KZA also show that Attorney Sinatra was present in a meeting on December 9, 2008 with Attorneys Kamer and Tourek regarding this matter; however, neither Attorney Kamer<sup>257</sup> nor Attorney Abbot<sup>258</sup> can now confirm whether Attorney Sinatra was present for the entirety of those meetings.

<sup>254</sup> [REDACTED]

<sup>255</sup> The confidentiality provision has an exception for the "confines of a judicial or arbitration proceeding between the parties to carry out the specific covenants of the agreement or unless specifically required by court order or government agency order or subpoena." [REDACTED]

<sup>256</sup> [REDACTED]

<sup>257</sup> [REDACTED]

<sup>258</sup> [REDACTED]

Attorney Kamer, who represented the Company, told IEB investigators that Attorney Slotnick was involved in the negotiations and that Attorney Slotnick and the attorney for Connie were "doing a lot of sidebars."<sup>259</sup> It appears that in this 2008 matter, Attorney Slotnick may have been acting as counsel for Mr. Wynn. Because Attorney Slotnick declined to be interviewed, the IEB was not able to directly ask him about his role in the negotiations for the settlement agreement between Connie and the Company.

When Attorney Tourek was interviewed by IEB investigators, he was asked if Attorney Sinatra, general counsel for the Company, was aware of the 2008 matter. Attorney Tourek replied, "I'm assuming yes. I don't know for sure, but I'm assuming yes."<sup>260</sup>

In a sworn interview with IEB investigators, Attorney Sinatra denied any knowledge of the sexual allegations in the draft complaint regarding Connie and Mr. Wynn.<sup>261</sup>

The Company had already terminated Connie by the time she made her assertions in 2008 of having had an "intimate sexual relationship" with Mr. Wynn. Also, Connie's assertions concerned sexual conduct with Mr. Wynn that occurred prior to the Company's founding. Therefore, the Company's sexual harassment policy and personal relationships policy technically had no direct bearing on Connie's allegations. Regardless, the allegations that the CEO and Chairman previously had engaged in such conduct with a subordinate employee warranted further inquiry and concern.

IEB investigators asked Attorney Kamer whether, as a result of the allegations in the 2008 draft complaint, he had any discussion with anyone at the Company about concerns regarding Mr. Wynn having had sexual contact with subordinate employees.<sup>262</sup> Attorney Kamer responded, "[N]o." When asked if he was aware of anyone at the Company doing anything with respect to Mr. Wynn and his having sexual contact with employees, he responded as follows:

*[N]o. And again, that's because it was 2008. It wasn't the #MeToo milieu. Employees had sex. It wasn't something that was encouraged. It was certainly something that was discouraged – in terms of the sexual harassment policies, in terms of prohibitions against supervisors having relationships with employees because of the Faragher decision,<sup>[263]</sup> because of the absolute liability. The*

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See Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

*policies were always, on a regular basis, revised to reflect changes in the law. And after Faragher, any decent law firm advising in the employee-relations area is going to be making sure that its policies and its supervisors understand that we have absolute liability if you have a relationship with a subordinate. It doesn't matter whether it's voluntary or not. That -- at any point that relationship can switch from voluntary to involuntary in the employee's mind. And so in all the training we've done, and I've done -- sexual harassment training -- this is the third rail. You don't want to touch it.*<sup>[264]</sup>

The Company was unable to produce any information or documents showing that an investigation was conducted, or that the matter was reported to the audit committee,<sup>265</sup> or that Mr. Wynn received any training as a result of the allegations in Connie's draft complaint, which involved alleged conduct that occurred prior to the creation of the Company.

IEB investigators interviewed Connie. She stated that she had engaged in a consensual sexual relationship with Mr. Wynn while she was a subordinate employee [REDACTED], before the formation of Wynn Resorts. She indicated that she parted ways with Mr. Wynn amicably, and that he brought her over to work at Wynn Resorts. She told investigators that she had difficulty with other managers who, she believed, resented that she had direct access to Mr. Wynn about operational matters. She told investigators that this difficulty contributed to her eventual leave and termination and that after settlement negotiations dragged on for almost two years, she felt her only recourse was to have her attorney send over the aforementioned draft complaint. She told investigators that she was brought to her attorney's office on December 9, 2008 and that she was left alone in a small room from the morning hours that day until about 5:00 A.M. the next day with only a break to leave for dinner, a break at around 2:00 AM to pick up her car (when her attorney insisted on riding in her car as she drove back to the attorney's office), and periodic visits from her attorney. She described being extremely anxious and upset and having her attorney come into the room at approximately 5:00 A.M. demanding that she sign

<sup>264</sup> [REDACTED]

<sup>265</sup> Attorney Tourek prepared a memorandum for the compliance committee for its meeting on April 28, 2009. The memorandum contained a list of "Cumulative Accounts Payable Disbursements [in excess of \$350,000 for] Wynn Resorts, Limited and Wynn Las Vegas LLC." The \$700,000 disbursement appeared on the third page of a four and one half page document listing over 250 disbursements and is listed as a "Legal settlement." The payment is listed as being made to G. Dallas Horton & Associates which appears under a heading captioned "Vendor Name." No specific information or explanation was highlighted, and there was no indication in the notes of the meeting that the matter was identified or discussed by the committee at all. [REDACTED]

the affidavit that denied any sexual relationship with Mr. Wynn. Connie told investigators that she was crying so hard that she couldn't read the document, so her attorney read it to her. She described her attorney yelling at her demanding that she sign the document, "NOW!" and telling her that it didn't matter because the document was going to be thrown away. She told investigators that she eventually acquiesced and signed the document under this duress. She stated that she believes that her attorney received approximately \$250,000 as a result of the ultimate settlement and she got under \$500,000.

Connie also told investigators that she was never contacted by anyone connected with the Company to inquire about her allegations that Mr. Wynn engaged in sexual conduct with her.

**IEB Findings from Events of 2008**

➤ ***Company executive knowledge***

- The investigation has revealed that the following Company executives were aware **in 2008** that Connie made allegations of sexual conduct involving Mr. Wynn while she was a subordinate employee [REDACTED] and before the creation of the Company. Neither of these executives is currently employed by the Company.
  - Stephen Wynn (former CEO and Chairman of the Board)<sup>266</sup>
  - Kevin Tourek (former senior vice president and general counsel for Wynn Las Vegas)
- The attorney billing records reflect that Attorney Sinatra, who was general counsel of Wynn Resorts at the time, was present for two of the meetings regarding this matter. However, Attorney Sinatra has denied actual knowledge of the allegations, and the attorneys who produced the billing information cannot confirm her presence for the entirety of the meetings.

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<sup>266</sup> Presumably, Mr. Wynn was aware of the allegations, particularly where Attorney Barry Slotnick, who has been described at times as Mr. Wynn's attorney, was brought in to assist in the matter. However, since Mr. Wynn and Attorney Slotnick declined the IEB's requests to be interviewed, the IEB was not able to inquire of them directly about Mr. Wynn's knowledge.

### **Significant Issues from Events in 2008**

Below are the issues which the IEB suggests the Commission consider in evaluating the ongoing suitability of Wynn Resorts, Limited as an entity qualifier for the Massachusetts licensee:

- The Company failed to make adequate inquiry or show an appropriate level of concern in the circumstances, despite having learned of an allegation involving sexual conduct by Mr. Wynn with a subordinate employee at a prior company, including an allegation that Mr. Wynn had repeatedly propositioned and relentlessly pursued her.
- The Company failed to evaluate the likelihood of any potential conflict of interest where Attorney Slotnick, at times identified as Mr. Wynn's personal counsel, was permitted to participate in settlement negotiations between Connie and the Company.
- Although the allegation involved conduct that allegedly occurred before the formation of the Company, the IEB nonetheless finds it troubling that Attorney Tourek, then-senior vice president and general counsel for Wynn Las Vegas, was aware of a certain prior allegation in 2006 (as previously discussed) that led to the \$975,000 settlement and still failed to make any further inquiry or take any action into the matter which was brought to his attention in 2008 and led to the \$700,000 settlement paid by the Company.

## **VII. IN 2009, ELAINE WYNN LEARNS OF THE 2005 MULTI-MILLION DOLLAR SETTLEMENT AND RAPE ALLEGATION AGAINST MR. WYNN**

***Summary:*** In 2009, Company shareholder and board member Elaine Wynn learns of the 2005 settlement agreement and rape allegation against Mr. Wynn. She contends that she reported it in 2009 to the Company's general counsel, Kimmarré Sinatra. Attorney Sinatra contends that Ms. Wynn reported the settlement to her well after 2009, but never the rape allegation. No disclosure was made to the board or to regulators.

### **A. Elaine Wynn Learns of the 2005 Settlement and Underlying Rape Allegation**

Mr. Wynn and Elaine Wynn were married to one another twice. They first married in 1963, then divorced in 1986. They married again in 1991 and divorced for the second time in



2010. Ms. Wynn co-founded Wynn Resorts in 2002 with Mr. Wynn. She was a member of the board at the Company's inception.

On February 5, 2009, while Mr. Wynn and Ms. Wynn were in the midst of divorce proceedings, an article ran in the *Las Vegas Review Journal* stating that a significant Las Vegas casino owner was bracing for an explosive story regarding an out-of-wedlock child.<sup>267</sup> Two months later, on April 9, 2009, one of Ms. Wynn's divorce attorneys, Gary Silverman, received an email from an individual self-identifying as Amy's stepmother (Amy was the party to the 2005 settlement agreement).<sup>268</sup> In that email, the stepmother indicated that she was blamed for an article written in a Las Vegas paper but that she did not have anything to do with it. The email stated, "If the cat is out of the bag about how Steve Wynn raped my stepdaughter I did not have anything to do with it." The email to Ms. Wynn's divorce attorney also stated that "Steve Wynn raped my stepdaughter and she settled for a 5 million dollar settlement."

Attorney Silverman forwarded the email to Ms. Wynn's other divorce attorney, Donald Schiller.<sup>269</sup> Attorney Schiller's office shared the document with Ms. Wynn, and she read it. In her interview with IEB investigators, she described reading it as "one of the single most upsetting things that's ever happened to me."<sup>270</sup>

Attorney Schiller told IEB investigators that he called the number provided in the email and spoke with the author. He described her as "totally uncooperative" and said that she told him she was drunk when she sent the email, that he should not pay attention to it, and that she was sorry she sent it.<sup>271</sup> The IEB notes that, as previously mentioned in this report, the non-disclosure provision of the 2005 settlement agreement applied to Amy's family members as well as to Amy.<sup>272</sup> At Ms. Wynn's direction, Attorney Schiller contacted Mr. Wynn's divorce attorney, James Jimmerson, seeking comment or an explanation from Mr. Wynn regarding the information in the email.<sup>273</sup> No response was forthcoming.<sup>274</sup>

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269 Id.

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274 Id.

On April 21, 2009, Attorney Schiller sent a follow-up email to Attorney Jimmerson. Attorney Schiller wrote that "the claims and disclosures made in the subject email are serious - to the parties as well as to their business."<sup>275</sup> Attorney Schiller went on to write:

*As I told you when we spoke, Elaine does not want to believe that the accusations made in the e-mail are true. We have gotten no assurances from Steve nor any assurance that the Wynn Resorts Ltd., security is dealing with the problem and in what manner. Under these circumstances, Elaine feels that the corporation's general counsel should at least be informed of the e-mail and its contents. It had been Elaine's hope that Steve would be the one discussing it with her. Of course, we do not know if it has occurred because no one has responded to us.*

*If the accusations made in the e-mail are untrue, then there would be less of a pressing need to deal with the issue. With that in mind, we ask that Steve provide us with an affidavit denying the claims made in the e-mail. If we receive such an affidavit Elaine will be more comfortable in waiting for Steve to deal with the issue. If we receive no affidavit by noon on Wednesday (tomorrow), then Elaine will bring the e-mail to the attention of the general counsel of the corporation. She will then feel as if she has fulfilled her fiduciary duty concerning this subject. This is not intended to be a threat in any way. It is merely explaining Elaine's dilemma and how she must resolve it.*

During her interview with the IEB on May 31, 2018, Ms. Wynn told investigators that she spoke with Mr. Wynn face-to-face in his office prior to April 23, 2009.<sup>276</sup> When asked about their conversation, she said, "I don't remember specifically, but I was wanting an explanation, and all he did was rant and suggest it was ridiculous, it was untrue, he was being blackmailed, that yes, he was there with her on a day when there were no other staff around, and that she had taken advantage of that situation to compromise him."<sup>277</sup> In her earlier interview with IEB investigators on March 8, 2018, Ms. Wynn stated the following:

[Ms. Wynn]: *So we go home, and I finally do have a meeting with Steve. And he claims that nothing happened, that the only thing that happened, he was foolish enough to be alone with this manicurist in his office area, getting a manicure with no staff around to observe and be a witness to the nothing that happened.*

[IEB]: *So, at this point, just to be clear, he denied any kind of sexual contact at all?*

<sup>275</sup> [REDACTED]

<sup>276</sup> [REDACTED]

<sup>277</sup> Id. [REDACTED]

[Ms. Wynn]: Yes.<sup>[278]</sup>

When asked if there was anything else she remembered, Ms. Wynn stated, "I can't recall, but I imagine we had talked about money, payment, the settlement."<sup>279</sup> She stated, "[W]hile we were together, he was waving a letter in front of me indicating that it was a retraction of the charges, signed by her, that was a confidential document, and that I was bound by the confidentiality of that document."<sup>280</sup> Ms. Wynn said that she did not remember if she saw the document he was waving itself, and did not know if there was any further documentation.<sup>281</sup> She said that Mr. Wynn told her to contact Attorney Schreck for more details.<sup>282</sup> She described her reaction to learning that Attorney Schreck had been involved in the settlement as follows: "And, to me, I thought that was another indication that it was handled properly because Frank Schreck had always been the attorney that handled things the way I thought would be appropriate."<sup>283</sup>

After speaking with Mr. Wynn, Ms. Wynn sought to gather more information by reaching out to the following three individuals: Attorney Schreck, Arthur Nathan (chief human resources officer at Wynn Las Vegas from 2003 to 2007; he is no longer with the Company), and Doreen Whennen (vice president of hotel operations at Wynn Las Vegas at the time of the settlement in 2005; she departed the Company in 2014).

Ms. Wynn told investigators, "[w]hen I spoke to Frank [Schreck], he was uncomfortable talking about anything other than the logistics of the situation, meaning the payout. When I asked him if he knew of any details, he explained that I would have to get that from Steve."<sup>284</sup>

According to Ms. Wynn, she contacted Mr. Nathan on April 23, 2009, for information. Ms. Wynn told investigators that she made notes memorializing her conversation with Mr. Nathan "in a very close proximity to the time we had the conversation."<sup>285</sup> Ms. Wynn's account

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Id.

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Id.

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Id.

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Id.

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Id.

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Id.

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Id.

to investigators of her conversation with Mr. Nathan tracked her notes, which she provided to the IEB and which read as follows:

*April 23, 2009*

*At approximately 10:00 am I called Arte Nathan on his cell phone [REDACTED]. He was driving his car in [REDACTED] where he now resides. I asked if he could call me back from a land line. He said he would be home in 15 minutes and would call. He called on my private Villa number [REDACTED] within about 20 minutes.*

*I apologized for the conversation we were about to have. I swore on my grandchildren's lives that I would keep our conversation confidential. I asked if he could also pledge to me that he would keep our conversation confidential. He did.*

*I explained that I was going through a painful period of our divorce. He expressed extreme sadness about our situation and his concern for our family and me in particular. I explained that my Nevada attorneys had been contacted by a third party who shared that her stepdaughter had been raped by my husband. I indicated that this person had left a phone number and name and that my attorney had contacted her. In the aftermath of this terrible shock I told Arte that when we confronted Steve he explained to me that there had been an incident with a manicurist at Wynn. Although he professed his innocence, I was informed of some of the details which I understood to be HIS version, not necessarily the truth. I told Arte that Steve told me that Frank Schreck handled the details. [Steve] called Frank and gave him permission to discuss the details including the amount of money involved and the creation of the trust to administer it. Frank felt uncomfortable discussing anything but the logistics of the situation. He would not go into the details of the altercation. He said that had to be between me and Steve, which left me to believe there was more to the story than Steve alleged.*

*As my rationale for getting Arte to share more details with me, I told Arte that this individual called me again and was willing to inform my daughters of this situation if I thought it would be helpful in my divorce proceedings. She was sympathetic to my position because of what her step daughter had gone through. Because I was uncertain of this person's stability, I was worried that she may contact them directly. Because her story may be untrue, I explained to Arte that in the event the girls become aware of the situation, I wanted to be armed with the facts so I could explain it to them to mitigate the emotional damage. I regret that I made all of this up to appeal to Arte's sympathy, but I felt justified in seeking the truth.*

*Arte shared with me many things. He said that the manicurist originally came to Doreen Whennan (sic) who was overseeing the Spa during this period. Arte felt that Doreen was trusted by this woman. Doreen brought the situation to Arte.*

Marc Schorr was also informed. The attorneys involved were Frank Schreck and Barry Slotnick.<sup>[286]</sup> The woman accused Steve of impregnating her. There is some dispute about whether the assignation was consensual but she claims she was taken advantage of. Her father became involved and led the effort to resolve the situation. Steve claimed vehemently to Arte and the others that he had been victimized. Arte told me that Doreen was not in total agreement with this assessment. The group felt that because Steve's credibility was poor because of his reputation and past episodes, that the company was at great risk.

Arte went on to say that he had argued that he felt the charge was serious enough to be brought before the board but that he was overruled. Frank and Barry said it would create undue damage to the company. He told me that the worst part of his job throughout all the years that he worked for us was dealing with the repeated incidents of harassment that involved Steve. He claims they started in Atlantic City. He said there was a pattern of unethical behavior on the part of the chairman that was inappropriate or even illegal. He agonized over his own role in this and felt compromised because of his family's history with the Wynns dating back to their childhood. He said another incident occurred as he was leaving the company when Andrew [Pascal] was already president [of Wynn Las Vegas].<sup>[287]</sup> They did not share it with Andrew because of his relationship to me.<sup>[288]</sup>

When I explained that the person alleged that they had been blamed for a leak in the papers, Arte acknowledged that there had been a blind item in Norm's column 2 months ago. When Arte saw the piece he said he got sick to his stomach.

I researched the past columns remembering that I had seen this as well. It appeared on Feb. 5<sup>th</sup>. This piece of information gave more credibility to the person who contacted me.

Steve tried to discount the e-mail by saying this person was a drunk and that nothing had appeared in any papers. The person did confess to having drunk too much when she sent the message. She was probably upset because she had been contacted by someone from our side who accused her.

I recall throughout the years that Steve would have altercations with Arte and tell me that he was a liar. I found it impossible to believe because I never witnessed Arte being untruthful. Nor could I understand if he had been untruthful, why Steve did not make a change. No one else in the company ever suggested to me that Arte was untruthful. I now understand that Arte was in a position to compromise Steve.<sup>[289]</sup>

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<sup>286</sup> Ms. Wynn subsequently stated that she has since been "made aware" that Attorney Slotnick was not involved in the 2005 settlement.

<sup>287</sup> Mr. Nathan left the Company in early 2007.

<sup>288</sup> Andrew Pascal is Ms. Wynn's nephew.

<sup>289</sup> [REDACTED]

That same day, April 23, 2009, Attorney Jimmerson sent Attorney Schiller a letter via email which stated the following:<sup>290</sup>

*Dear Don,*

*I am in receipt of your letter of April 21, 2009. As we discussed, based upon Mrs. Wynn's conversations with Mr. Wynn she has been informed regarding the allegations contained in the email and its affect (sic) if any, on the Wynn Las Vegas. I trust, therefore, that Mrs. Wynn's concerns regarding the Wynn Las Vegas have been satisfactorily resolved at this time, and no further action will be taken by your client. Additionally, since you advised me in a previous conversation that your client has no interest in pursuing an alleged community waste claim, I believe this matter to be fully and finally resolved. If this is not your understanding, please advise.*

*Finally, If Mrs. Wynn desires to be further informed regarding this issue, I encourage her to speak to Mr. Wynn directly.*

On April 24, 2009, Attorney Schiller responded via email to Attorney Jimmerson as follows:<sup>291</sup>

*Jim,*

*Your letter is not totally accurate. Elaine's reactions were not motivated by money claims. That is why I essentially told you waste in a divorce law sense was not even known by her. I am her lawyer and will fully inform her of her rights regarding all aspects of her case when I gather all relevant information for her. Until then we cannot say what position we may take concerning waste. We intend to continue our work with you & Steve to amicably resolve the case and any disagreements we may encounter on the way.*

*Don*

Attorney Schiller told investigators that he never received the affidavit from Mr. Wynn that he had requested.<sup>292</sup> He and Ms. Wynn did not have any further conversation regarding Ms. Wynn's planned report to general counsel, Attorney Sinatra.<sup>293</sup> Attorney Schiller told investigators that he assumed that the conversation between Ms. Wynn and Attorney Sinatra took

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291 Id.,

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place given the relationship between the two at the time, but he could not confirm that the conversation took place in 2009.<sup>294</sup>

**B. Ms. Wynn Tells Investigators that She Spoke with Attorney Sinatra in 2009 about the Settlement, Including the Rape Allegation**

Ms. Wynn told IEB investigators that soon after she viewed the email from Amy's stepmother in 2009, she had a face-to-face meeting with Attorney Sinatra.<sup>295</sup> She could not recall where the meeting took place but believed it was at the Wynn offices or at her "villa" on Company property.<sup>296</sup> Ms. Wynn stated, "I told her that I had received an email with an allegation that an employee made saying that she had been raped by Mr. Wynn in his office location, and I can't recall if I told her that she claimed that she had been impregnated as well, but that there had been money, there was a settlement."<sup>297</sup>

Ms. Wynn stated that she did not provide Attorney Sinatra with a copy of the email from Amy's stepmother at that time or at any other time thereafter and that Attorney Sinatra never asked for a copy of the email that the stepmother had sent to Ms. Wynn's attorney.<sup>298</sup> Ms. Wynn also told investigators that she did not tell Attorney Sinatra that Mr. Nathan had told her that there was another incident involving Mr. Wynn that took place around the time Mr. Nathan was leaving the company.<sup>299</sup> Ms. Wynn also stated that she did not tell Attorney Sinatra that Mr. Nathan had told her that Mr. Wynn had engaged in a pattern of unethical behavior that was inappropriate or even illegal.<sup>300</sup> Ms. Wynn also stated that she never alerted Attorney Sinatra that she had maintained notes of her conversation with Mr. Nathan.<sup>301</sup> Ms. Wynn informed investigators that, "the reason I called [Attorney Sinatra] was to tell her about it in her capacity as general counsel" and that "I left it with the expectation that I would have a response of some kind."<sup>302</sup> Ms. Wynn described Attorney Sinatra's reaction as being "very empathetic."<sup>303</sup>

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Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id. Ms. Wynn testified similarly in a sworn court hearing in Nevada in the Okada litigation on March 28, 2018.

Ms. Wynn told investigators that she and Attorney Sinatra had a subsequent conversation where Attorney Sinatra "told me generally – and I can't remember specifically, that it had been looked into, that it was determined that it was not a company matter, that there were – that Steve paid for it personally, he settled with [Amy] personally, that no funds or other personnel from the company were used in this, and that it had been handled appropriately."<sup>304</sup> When asked whether she made further inquiry of Attorney Sinatra, given the circumstances and the serious nature of the offense, Ms. Wynn responded, "I would have to suggest that because of the situation itself, my own mental state, my confusion and hurt and everything else that I have shared about this situation, I just accepted her explanation and – accepted her explanation."<sup>305</sup>

Ms. Wynn said that she did not create any notes contemporaneously with her conversations with Attorney Sinatra.<sup>306</sup> When asked what she did to confirm that she fulfilled her duties as a director, she responded, "I'm not an attorney. And I did what I was told was the appropriate course of action," then stating that she and her divorce attorney "discussed it and we determined that [the Company's general counsel] would be the appropriate place to report this, and that that individual would then determine what other steps would be or should be required."<sup>307</sup>

[Question]: *Did you ever require [Attorney] Sinatra to report back to you what steps she took, or do anything?*

[Ms. Wynn]: *No.*

[Question]: *In 2009, did you and your attorney discuss reporting the incident to the board of directors?*

[Ms. Wynn]: *No.*

[Question]: *Why do you think that you never brought that up with your attorney as an option?*

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<sup>303</sup> Id. [REDACTED]

<sup>304</sup> Id. [REDACTED]

<sup>305</sup> Id. [REDACTED]

<sup>306</sup> Id. [REDACTED] In her interview with the IEB on 5/31/18, Ms. Wynn stated that she believed there was a letter between her and Attorney Schiller that would help confirm the timeframe of the conversation with Attorney Sinatra, *id.* [REDACTED] however Attorney Schiller did not have such a document.

<sup>307</sup> Id. [REDACTED] Attorney Schiller told investigators that Ms. Wynn "felt from the outset that that was the appropriate approach, but she thought to show respect for Steve she would tell him first and have him initiate the investigation." [REDACTED]



[Ms. Wynn]: *Because I thought that I fulfilled my fiduciary obligation by reporting it to the secretary and the general counsel of the company.*

[Question]: *Did your attorney, when giving you that opinion – and that was [Attorney] Schiller?*

[Ms. Wynn]: *Yes.*

[Question]: *Did [Attorney] Schiller, to your knowledge, do any legal research on the obligation or what you should be doing? Did your attorney discuss with you what kind of work he did in order to give you proper advice?*

[Ms. Wynn]: *He was my marital divorce attorney and that's what his primary purpose was at that time, and I think we didn't go any deeper than just that conversation.*<sup>[308]</sup>

Ms. Wynn did not discuss her knowledge of the 2005 sexual assault allegation or resulting settlement agreement with the Company's board of directors or the Nevada Gaming Control Board in 2009.<sup>309</sup> She did, however, raise the matter in her 2016 amended crossclaim in the Okada litigation which was previously referenced and is detailed later in this report.<sup>310, 311</sup>

Attorney James Cole currently represents Ms. Wynn. In a letter to the IEB dated October 16, 2018, Attorney Cole provided the following explanation for Ms. Wynn's actions after learning of the 2005 settlement agreement and rape allegation:<sup>312</sup>

*After Ms. Wynn informed Ms. Sinatra of the allegation that Mr. Wynn raped a Wynn Resorts employee in 2005, Ms. Sinatra consulted with Wynn Resorts'*

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309 *Id.*

310 In Ms. Wynn's deposition in the Okada litigation on October 10, 2017, she testified that while she did not report the matter to the board, she did tell Russell Goldsmith, who was a board member at the time.

She indicated that she told him "after he was re-elected to the board, whatever time period that was." (Mr. Goldsmith was a board member from 2008 to 2012). In a deposition on October 30, 2017, Mr. Goldsmith testified that he was not aware that an employee of the spa at the Company alleged in 2005 that Mr. Wynn raped her in the spa area of his office.

311 Ms. Wynn did not directly notify the board's audit committee of the 2005 settlement or the rape allegation either when she learned about them in 2009 or at any time thereafter. The IEB investigation does show, however, that she notified the board's audit committee in writing in 2016 of other, unrelated concerns after she filed her fifth amended crossclaim in the Okada litigation on March 28, 2016.

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*outside counsel Frank Schreck. Following Mr. Schreck's legal advice, Ms. Sinatra informed Ms. Wynn that the matter "had been discussed by attorneys and that it was deemed not to have been an issue of concern for the company, that it had been handled personally, and therefore it had been resolved." Ms. Sinatra informed Ms. Wynn that Mr. Schreck had been involved in handling the allegations on behalf of the Company. At the time, Ms. Wynn had no reason to doubt Ms. Sinatra and reasonably believed that Ms. Sinatra, Mr. Schreck, and the Company's attorneys knew best how such allegations should be handled. In short, Ms. Wynn reasonably relied on the advice she was given. Consequently, Ms. Wynn did not believe there was anything to disclose when she went through licensing in Massachusetts. Subsequent to her licensing in Massachusetts, Ms. Wynn came to question the veracity of Mr. Wynn and Ms. Sinatra as well as other board members. Mr. Wynn and Ms. Sinatra began to retaliate against Ms. Wynn – including by orchestrating her removal from the Wynn Resorts Board of Directors based on false, pretextual reasons. Over time, Ms. Wynn came to believe that Wynn Resorts, Mr. Wynn, and Ms. Sinatra did not handle the 2005 rape allegation properly, contrary to Ms. Sinatra's prior representation. [internal citations omitted].*

The IEB also notes that Ms. Wynn commissioned Thomas Auriemma to submit an expert report in the Okada litigation.<sup>313</sup> In a supplemental declaration to his expert report, Mr. Auriemma opined that in the circumstances presented, Ms. Wynn "adequately discharged her obligations under the Company's governance and compliance policies and under the applicable gaming laws and regulations" by reporting her knowledge of the 2005 settlement to Attorney Sinatra, the Company's general counsel.<sup>314</sup> Mr. Auriemma noted the following circumstances in reaching his opinion: that Ms. Wynn learned about the matter four years after the alleged event, that she had no first-hand knowledge of it, that Mr. Wynn told her it was untrue and showed her a retraction letter, that she learned Attorney Schreck had been involved and concluded that no action was necessary, and that she spoke with Attorney Schreck to gain information. The IEB points out that the expert report was commissioned by Ms. Wynn for the purpose of advancing her arguments in the Okada litigation. Like all expert reports commissioned by parties in litigation,

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<sup>313</sup> [REDACTED] According to the biographical information in his expert report, Mr. Auriemma is an attorney with experience in gaming licensing, suitability, and regulatory compliance. Among other positions, he previously was a gaming regulator in New Jersey where he served as the deputy director and then the director of the New Jersey Division of Gaming Enforcement, as well as the deputy director of the legal division of the New Jersey Casino Control Commission. Mr. Auriemma has also served on the compliance committees of a number of publicly traded companies, including as chief compliance officer for Penn National Gaming, Inc.

<sup>314</sup> [REDACTED]

it should be viewed through the lens of advocacy and not necessarily as dispositive of the issues. On that point, in light of the circumstances and the substantial sum for which the case settled, Amy's retraction letter may not reliably call into question the veracity of her initial allegation of rape.

With respect to Ms. Wynn's current ability to influence or direct Company affairs, the IEB notes that restrictions have recently been put into place. Pursuant to a Cooperation Agreement dated August 3, 2018 between Ms. Wynn and the Company, upon the appointment of Philip Satre as Chairman of the Company's board of directors and until the later of the date on which Mr. Satre ceases to be Chairman or the 2020 annual meeting of the Company's stockholders, Ms. Wynn has agreed to certain standstill restrictions, including restrictions that preclude her from acquiring more than 9.9% of the Company's stock, nominating new directors, submitting shareholder proposals, engaging in the solicitation of proxies, or seeking to influence the management, board, or business policies of the Company.<sup>315</sup>

**C. Attorney Sinatra Contradicts Ms. Wynn Regarding Obtaining Knowledge of the 2005 Settlement and Underlying Rape Allegation**

On March 28, 2018, Ms. Wynn testified in open court in Nevada at a hearing in the Okada litigation that she had informed Attorney Sinatra in 2009 of the 2005 rape allegation against Mr. Wynn and the subsequent settlement agreement. In a press statement released immediately thereafter, Attorney Sinatra stated:<sup>316</sup>

*I disagree vehemently with Elaine Wynn's testimony. My recollection, which is clear, is that at no time did Elaine Wynn ever tell me that there was an allegation of rape against Steve Wynn. In the relevant conversation in which she promised to destroy Steve Wynn and said she didn't care if that reduced the company's stock price to zero in the process, Elaine Wynn made an oblique reference to a settlement, and nothing more. Elaine Wynn has repeatedly used the broad protection of the litigation privilege to unjustly smear my reputation.*

In a deposition in the Okada litigation held on October 31, 2017, Attorney Sinatra described the time frame that Ms. Wynn informed her of the 2005 incident as "sometime after the divorce," which was finalized in 2010.

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<sup>315</sup> See Wynn Resorts, Limited, Item 1.01 to Form 8-K, Aug. 3, 2018 (Entry into a Material Definitive Agreement), retrieved from SEC EDGAR website at <http://www.sec.gov/edgar.shtml>.

<sup>316</sup> [REDACTED]

In an interview with IEB investigators on February 9, 2018, Attorney Sinatra stated that her conversation with Ms. Wynn regarding the 2005 settlement took place around the time Mr. Wynn married his current wife, Andrea, in 2011.<sup>317</sup> Attorney Sinatra described Ms. Wynn's emotional state at the time as "really tough," and she said that she tried to put Ms. Wynn's disclosure to her about the 2005 settlement "in [the] context [of] what was going on in their lives."<sup>318</sup> Attorney Sinatra said that she was uncertain whether Ms. Wynn informed her of the dollar amount of the settlement, but Ms. Wynn gave her enough information to prompt her to contact Attorney Schreck.<sup>319</sup>

In an interview with the IEB on August 3, 2018, Attorney Sinatra told IEB investigators that it was January of 2012 when she had a conversation with Ms. Wynn, during which Ms. Wynn expressed her displeasure about restrictions placed on her by the stockholder's agreement and that Ms. Wynn told her, "I'm sick of it. I'm not waiting any longer. I'm going to destroy this guy [Mr. Wynn]. I don't care what it takes. I don't care if the stock[] goes to zero."<sup>320</sup> Attorney Sinatra stated that during this conversation, Ms. Wynn mentioned the settlement and alluded to "misconduct" on the part of Mr. Wynn, with no mention of "rape."<sup>321</sup> Attorney Sinatra also provided investigators with an undated "Memo To File," which she stated she authored as a memorialization of her conversation with Ms. Wynn. The memo references a conversation on January 14, 2012. Attorney Sinatra wrote that Ms. Wynn "continued by telling me that she wanted 'out of the stockholders agreement with Steve' and was prepared to 'make him look bad to do it.' She advised that she had kept quiet for the last year because she thought that she would be able to sell her shares, but now that that was looking unlikely, she was not content to be quiet any longer." The IEB notes that the Memo To File does not mention any conversation about the 2005 settlement agreement.<sup>322</sup>

In her August 3, 2018 interview with the IEB, Attorney Sinatra told IEB investigators that after her conversation with Ms. Wynn, she first went to Attorney Tourek and asked him

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318 Id.

319 Id.

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321 Id.

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whether he knew about either a settlement or allegations against Mr. Wynn.<sup>323</sup> Attorney Sinatra stated that Attorney Tourek responded, "not really, I don't think I know."<sup>324</sup> Attorney Sinatra believes she then contacted Marc Schorr (president of Wynn Las Vegas in 2005; he is no longer with the Company), but she did not recall the substance of that conversation.<sup>325</sup> She then contacted Attorney Schreck and had a "short" conversation with him about the 2005 settlement.<sup>326</sup> She said that Attorney Schreck characterized the basis of the settlement as involving an encounter between Mr. Wynn and an employee that was sexual in nature.<sup>327</sup> She also stated that Attorney Schreck told her that Mr. Wynn paid the settlement amount out of his personal funds, that there was a full release of claims, and that the employee had recanted the allegations.<sup>328</sup> Attorney Sinatra could not recall whether she asked Attorney Schreck what the original allegations involved, and she said that he did not tell her that initially there was a rape allegation.<sup>329</sup> Attorney Sinatra told investigators that she asked Attorney Schreck whether she needed to do anything, and he told her she did not.<sup>330</sup> When asked whether she notified anyone else at the Company, she responded, "I don't know if I did."<sup>331</sup> She went on to state that "it was seven-year old matter that I had been assured by outside counsel had been handled appropriately at the time. So there wasn't anything that led me to believe I was supposed to do anything further."<sup>332</sup> Attorney Sinatra told investigators that she believed Attorney Schreck represented both Mr. Wynn and the Company in the 2005 settlement negotiations, and that she knew that dual representation can (but does not necessarily) raise a conflict of interest, but she did not look into that angle seven years after the fact.<sup>333</sup> She said that after learning that the outside attorneys handled it, she did not think about it any further.<sup>334</sup>

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324 Id. Attorney Sinatra also told IEB investigators that at that point, Attorney Tourek did not tell her anything about the matter involving Beth from 2006. Id.

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Attorney Schreck confirmed to IEB investigators that he spoke to Attorney Sinatra about the 2005 settlement "at some point in time," but he could not remember precisely when.<sup>335</sup> He thought it was around the time of the Wynns' divorce, but he just did not know for certain.<sup>336</sup> Attorney Schreck stated that he explained to Attorney Sinatra that there was an allegation of misconduct by Mr. Wynn involving an employee and that it was resolved for \$7.5 million, that there was a release of claims for the Company and Mr. Wynn, and that the employee and her husband had been paid over a period of time.<sup>337</sup> When asked if he made any mention of a paternity issue, Attorney Schreck responded that the paternity aspect was always implicit and was the underlying justification for the \$7.5 million figure.<sup>338</sup> Attorney Schreck stated that he did not advise Attorney Sinatra about whether she was obligated as general counsel to disclose the settlement to gaming regulators.<sup>339</sup> He assumed she was aware of the legal advice Attorney Rubinstein obtained on the matter;<sup>340</sup> however the IEB notes that Attorney Rubinstein has maintained that he was not aware of the sexual assault allegation underlying the settlement. Attorney Schreck also stated that he did not represent the Company on corporate governance matters, so he would not have provided any advice to Attorney Sinatra or any other Company executives about whether to report the settlement to the board of directors.<sup>341</sup>

#### **D. Summary of Dispute between Attorney Sinatra and Ms. Wynn from the 2009-2012 Time Period**

Ms. Wynn has maintained that she told Attorney Sinatra of the settlement agreement and the rape allegation in 2009. Attorney Sinatra has maintained that Ms. Wynn told her about the settlement agreement later, but that she never told her about a rape allegation. Neither Attorney Schreck nor Attorney Schiller could confirm the timeframe when Ms. Wynn told Attorney Sinatra about the 2005 settlement agreement, or whether she told her about the rape allegation at all. Both Attorney Schreck and Attorney Sinatra maintain that the sexual assault allegation never came up in their discussion with one another. While there is a factual dispute about the extent of

335 [REDACTED]  
336 Id. [REDACTED]  
337 Id. [REDACTED]  
338 Id. [REDACTED]  
339 Id. [REDACTED]  
340 Id. [REDACTED]  
341 Id. [REDACTED]

the report from Ms. Wynn to Attorney Sinatra, Attorney Sinatra has admitted that the report was sufficient enough for her to make inquiry of Attorney Schreck.

**IEB's Findings from events of 2009 - 2012**

➤ ***Company executive/Massachusetts qualifier knowledge***

- The investigation has revealed that in 2009, Elaine Wynn, a qualifier for the Massachusetts casino license, became aware of the 2005 settlement agreement and rape allegation against Mr. Wynn. Ms. Wynn made a disclosure to Attorney Sinatra, the Company's general counsel/secretary (who is no longer employed by the Company); however there is a factual dispute as to the exact time period of the disclosure and the extent of the disclosure, including whether Ms. Wynn disclosed the sexual assault allegation to Attorney Sinatra at all.
- Attorney Sinatra admits that upon learning of the 2005 settlement agreement and the retraction of the allegation, she did not inquire of Attorney Schreck about the nature of the underlying allegation and did not independently evaluate his conclusion that the Company was not required to do anything in the face of a multi-million dollar settlement and sexual conduct involving the CEO and Chairman with a subordinate employee.

**Significant Issues from events of 2009 - 2012**

Below are the issues which the IEB suggests the Commission consider in evaluating the ongoing suitability of Elaine Wynn. Given that Attorney Sinatra is no longer with the Company and is no longer a qualifier, her suitability is not a question within the Commission's purview.

- Failure of Ms. Wynn to provide documentation of the 2005 matter (in the form of the email from Amy's stepmother or Ms. Wynn's own notes of her conversation with Arthur Nathan), or any information regarding the 2006 matter (referred to in her notes) when making a disclosure to general counsel.
- Failure of Ms. Wynn to provide information on the 2005 and 2006 matters directly to the board or regulators in 2009 or thereafter.

Ms. Wynn's contention that she satisfied her fiduciary obligation as a board member by reporting the 2005 settlement (and according to Ms. Wynn, also the rape allegation) to the Company's general counsel/secretary is a matter that is appropriate for the Commission to

consider in its review. The Commission may want to consider whether or not Ms. Wynn had a fiduciary obligation to obtain further information regarding the 2006 incident disclosed to her by Mr. Nathan.

## **VIII. THE 2013 SUITABILITY REVIEW OF WYNN MA, LLC AND ITS CORRESPONDING QUALIFIERS**

As part of this investigation, the IEB reviewed the materials that Wynn MA, LLC and its qualifiers submitted to the Commission in 2013 as part of its Phase 1 (suitability) application for the category 1 gaming license in Region A. As part of the Phase 1 process, each individual qualifier submitted a completed Multi-Jurisdictional Personal History Disclosure (MJPHD) Form<sup>342</sup> and a Massachusetts Supplement, and also submitted to a sworn in-person interview with IEB investigators. The Company's 2013 application submissions for a gaming license in Massachusetts (including both the written submissions and the face-to-face interviews) did not disclose in any way the known information about settlement agreements or allegations of sexual misconduct. Prior to these interviews, in an e-mail dated May 28, 2013, the Michael and Carroll investigator informed the Company, through Attorney Sinatra, that in order to evaluate suitability, the IEB would require "any and all internal documents dealing with . . . high profile issues that Mr. Wynn and [the Company] are dealing with or have dealt with in the past. These matters may involve litigation and personal relationships as well as business matters . . ."<sup>343</sup>,

Nondisclosure of derogatory information, particularly if such information was deliberately concealed in contravention of Company policy, may be considered as reflective of the honesty, integrity, and good character of the Company and/or the individual. Nondisclosure

<sup>342</sup> The MJPHD is a personal disclosure form used in gaming jurisdictions across the United States. The MJPHD is the product of a collaborative effort by multiple gaming jurisdictions to offer individuals entering into the suitability background process a comprehensive, uniform approach to producing required information. The standardized nature of the form across gaming jurisdictions makes the application process more efficient for individuals who are seeking qualification or who are required to update their suitability in multiple jurisdictions. The MJPHD contains sections for disclosure of information pertaining to the individual and in some sections for family members as well in the following areas: Personal Data; Residence Data; Family/Social Data; Military Service Data; Educational Data; Offices and Positions; Employment and Licensing Data; Civil, Criminal and Investigatory Proceedings; Vehicle Operation Data; and Financial Data.

<sup>343</sup> [REDACTED]



of derogatory information deprives the regulator of the opportunity to evaluate the significance, if any, of the information on suitability. Nondisclosure also deprives the regulator of the opportunity to determine whether corrective measures or the imposition of license conditions may adequately address any particular concerns of the regulator in a given jurisdiction.<sup>344, 345</sup>

At the time the Phase 1 application was filed in January of 2013, three of the Company's qualifiers – Mr. Wynn, Ms. Wynn, and Attorney Sinatra – were aware of the 2005 settlement agreement. The evidence establishes that two of them – Mr. Wynn and Ms. Wynn – were also aware of the rape allegation behind the 2005 settlement agreement.<sup>346</sup> Yet none of the qualifiers disclosed the 2005 settlement to the Commission during the 2013 suitability review either in their written submissions or during their in-person interviews with investigators.

Ms. Wynn has contended that she satisfied her fiduciary duties and regulatory reporting obligations by reporting to Attorney Sinatra. Ms. Wynn told IEB investigators, "I believed that our gaming attorney, Frank Schreck, and our General Counsel, Kim Sinatra, were informed of these allegations, and it was up to them to do what was appropriate with the regulatory environment."<sup>347</sup> When asked if she had an independent obligation as a qualifier to disclose the information, Ms. Wynn responded, "I did not know if the charges were even true or not."<sup>348</sup> When then asked if, as a director, she had an obligation to find out, she stated, "In all of the regulatory filings that I had been through in all the states that we had done business, there was never an issue where I didn't have confidence that our gaming attorneys and our general counsel didn't handle our affairs properly."<sup>349</sup>

Attorney Sinatra has contended that she relied upon a "short" conversation with Attorney Schreck, who had historically been used by the Company for regulatory matters and who also handled the 2005 settlement, that there was nothing that she, as general counsel, needed to do

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<sup>344</sup> During an interview conducted in connection with the Company's 2013 suitability investigation, Attorney Tourek told investigators that the gaming license is the most important part of the Company, and that Mr. Wynn and Mr. Schorr have preached to never do anything to jeopardize the license.

<sup>345</sup> See, e.g., 205 CMR 116.11 (a gaming licensee shall have an approved mechanism for disassociating itself from a qualifier found unsuitable).

<sup>346</sup> Ms. Wynn contends that she also disclosed the rape allegation to Attorney Sinatra.

<sup>347</sup> [REDACTED]

<sup>348</sup> [REDACTED]

<sup>349</sup> [REDACTED]

regarding the 2005 matter.<sup>350</sup> Neither Attorney Schreck nor Attorney Sinatra provided investigators with any other information indicating that they had a meaningful conversation specifically regarding reporting obligations to gaming regulators.

In addition to not disclosing the 2005 settlement agreement, Mr. Wynn also did not disclose to the Commission the 2006 settlement and the underlying allegation that he was wrongfully engaged in a sexual relationship with an employee, or the 2008 settlement and the allegation of sexual conduct with an employee, both of which may at a minimum have raised potential conflict of interest issues. Also, as previously discussed in Section VI of this Report, there is some evidence that Attorney Sinatra may have been aware of the circumstances surrounding the 2008 settlement. Had this information been documented in any way, or reported to the audit committee of the board of directors pursuant to the Company's Code of Business Conduct and Ethics as areas creating the potential for a conflict of interest, the IEB would have had the ability to identify these matters in 2013, and the Commission would have had the opportunity to evaluate their impact on suitability of both the Company and the individual qualifiers, including Mr. Wynn, at that time. In addition, at no point after the finding of suitability in December of 2013 or the Commission's vote to award the license in September of 2014 were any of the settlements or known allegations involving alleged sexual misconduct against Mr. Wynn, or sexual conduct involving Mr. Wynn and a subordinate employee, disclosed by Mr. Wynn or the Company to the Commission.

The Commission will have to consider whether the Massachusetts gaming law and regulations mandated disclosure of the 2005 settlement and related sexual assault allegation or any other allegation of sexual misconduct or sexual conduct involving Mr. Wynn and a subordinate employee.

Mr. Wynn's MJPHD form submitted to the Commission contained no reference to "Entity Y, LLC," which was the entity created for the purpose of paying Amy and her husband on Mr. Wynn's behalf.<sup>351</sup> Nor did Mr. Wynn's MJPHD form contain any reference to the fact that at the time of the MJPHD form's submission to the Commission, the payments to Amy's husband pursuant to the settlement agreement were still ongoing. Question 23 of the MJPHD form requires the individual to "List any group, firm, partnership or any other business in which you

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<sup>350</sup> [REDACTED]

<sup>351</sup> [REDACTED]

have held an ownership interest of 5% or more for the past twenty years, or since the age of 18, whichever is less." Although Mr. Wynn's name is not listed on the paperwork filed with the Nevada Secretary of State for Entity Y, the entity was formed for the sole purpose of maintaining confidentiality of the 2005 settlement agreement. The settlement amount was funded by Mr. Wynn personally, and it was paid to Amy and her husband over time. At the time of the 2013 application, Mr. Wynn presumably retained a reversionary interest in the funds yet to be paid in the event of a breach of the agreement. Entity Y was not dissolved until August 15, 2016. In question 58, which required a listing of liabilities, and in question 73, which required a listing of "any other indebtedness," there is no reference to the ongoing payments to Amy's husband, which were due to be paid through the next two years. Whether the original lump-sum payment deposited by Mr. Wynn into a trust handled by the law firm discharged Mr. Wynn's indebtedness, or whether he technically did not have an "ownership interest" in Entity Y is arguable. Regardless, Mr. Wynn's unilateral decision not to disclose the 2005 settlement, in light of the comprehensive nature of the MJPHD, which was created for the purpose of providing gaming regulators with full transparency of finances and business interests, is a concern to the IEB.

As previously mentioned in this report, Mr. Thomas Auriemma was retained as an expert in the Okada litigation by Ms. Wynn. In his expert report, Mr. Auriemma opined that the 2005 settlement agreement should have been disclosed to gaming regulators.<sup>352</sup> According to Mr. Auriemma's report, disclosure could have occurred in a number of ways.<sup>353</sup> Disclosure could have occurred indirectly, via initial reporting to the Company's compliance committee or board of directors, so that gaming regulators could have discovered it through their review of meeting minutes.<sup>354</sup> Disclosure also could have occurred directly, with the Company or some individual directly reporting the matter to gaming regulators.<sup>355</sup> Another means of disclosure, according to Mr. Auriemma, would have been by disclosure of information related to "Entity Y" on Mr. Wynn's MJPHD Form.<sup>356</sup> As previously discussed, in a supplemental declaration to his expert report, Mr. Auriemma opined that in the circumstances presented, Ms. Wynn "adequately

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<sup>352</sup> [REDACTED]

<sup>353</sup> Id. [REDACTED]

<sup>354</sup> Id.

<sup>355</sup> Id.

<sup>356</sup> Id.

discharged her obligations under the Company's governance and compliance policies and under the applicable gaming laws and regulations" by reporting her knowledge of the 2005 settlement to Attorney Sinatra, the Company's general counsel.<sup>357</sup>

Mr. Wynn and the Company retained John O'Reilly, who offered a rebuttal expert opinion in the Okada litigation.<sup>358</sup> In the opinion of Mr. O'Reilly, the Company handled the 2005 matter in a manner that was "reasonable" and "appropriate."<sup>359</sup> As bases for his opinion, Mr. O'Reilly pointed to retention of and reliance by Mr. Wynn and the Company upon "competent, highly experienced legal counsel" (Attorneys Schreck, Kamer, and Coben), report of the matter upstream to the COO (Marc Schorr), and the Company's internal investigation.<sup>360</sup> As previously mentioned, the Commission should consider the context in which these two expert reports were prepared, i.e., they were commissioned by opposing parties advocating to advance their respective positions in litigation.

As part of the 2013 suitability investigation, an investigator for Michael and Carroll also contacted Attorney Schreck and questioned him regarding Mr. Wynn's suitability. According to the report prepared by the investigator in 2013, "[Mr.] Wynn is described by Schreck as very principled and ethical in the conduct of his personal as well as business affairs. Schreck described [Mr.] Wynn as a fantastic person and knows of no instance of questionable activity or associations by [Mr.] Wynn at any point during the time they have known one another. Schreck believes [Mr.] Wynn to be someone who enjoys a solid reputation."<sup>361</sup> Attorney Schreck did not disclose to investigators that he knew that Mr. Wynn had been accused of rape, the details of his initial conversation with Amy's attorney, the circumstances regarding the settlement agreement

<sup>357</sup> [REDACTED]

<sup>358</sup> [REDACTED] According to the biographical information in his expert report, Mr. O'Reilly is an attorney who has spent much of his 40 year legal career focused on representing the interests of gaming in Nevada. He previously served as Chairman of the Nevada Gaming Commission and also served on the Nevada gaming policy committee. He has served and continues to serve on the compliance committees for various entities involved in the gaming industry and on the boards of directors and audit committees for a number of publicly-traded companies.

<sup>359</sup> *Id.* [REDACTED]

<sup>360</sup> *Id.* [REDACTED] The IEB disputes Mr. O'Reilly's characterization that the matter was internally investigated by the Company. Although the evidence obtained by the IEB shows that Mr. Schorr spoke to both Amy and Mr. Wynn, there is no evidence to suggest that Mr. Schorr made a meaningful inquiry of either of them, or that he considered his role to be that of a fact-finder. According to the affidavit he filed in the Okada litigation, Mr. Schorr's so-called investigation of the allegation consisted of telling Mr. Wynn about it and relying upon Mr. Wynn's statement that the allegation was untrue. [REDACTED]

<sup>361</sup> [REDACTED]

and required retraction, the admission by Mr. Wynn to Attorney Schreck that he had sexual relations with a subordinate employee in his office area,<sup>362</sup> or the fact that the Company did not follow required procedure and conduct an investigation.

When interviewed by the IEB on May 17, 2018, Attorney Schreck told investigators that he did not have a specific recollection of speaking with the investigator from Michael and Carroll back in 2013.<sup>363</sup> When asked about his statement to investigators that he "knows of no instance of questionable activity," Attorney Schreck stated:

*I don't put allegations in something like that. That made no sense to me. For all the experience that I've had in gaming, somebody can make allegations that are totally untrue. You see them going on all the time now with the #MeToo stuff, that are just – some of them are preposterous. An allegation is something that I wouldn't report if – unless I felt there was substance to the allegation. I've told you I've gone through the process of my own analysis because of my relationship with Steve and knowing his character, and then I got the information from his lawyer that backtracked on the rape and stuff and basically said that didn't occur, that they're sensationalizing the issues.<sup>[364]</sup>*

The IEB followed up with the following:

[Question]: *At this time were you aware that Wynn Resorts had not followed its HR protocol to do an investigation?*

[Schreck]: *I would not have known.*

[Question]: *So you didn't know? So you wouldn't have known?*

[Schreck]: *No.<sup>[365]</sup>*

In addition, Attorney Schreck had previously testified in a deposition in the Okada litigation that Amy's rape allegation raised no concerns about Mr. Wynn's suitability, and that the 2005 matter was merely "a personal indiscretion and bad judgment" on Mr. Wynn's part.<sup>366</sup> Nonetheless, Attorney Schreck told investigators that when he advises clients about filling out the gaming disclosure forms, he "tell[s] the applicant that the most important part of his, of the

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Id.

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Id.

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Id.

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process for him, is filling out the application completely and thoroughly. And if you're going to err, err on the side of overdisclosure."<sup>367</sup>

In sum, none of the settlements that existed at the time, nor the allegations behind them, were disclosed to the Commission in 2013. Despite the retractions that were part of the settlement agreements, the accusations are still relevant to the extent they show that Company executives knew about them and did not follow Company procedures requiring an investigation.<sup>368</sup> The matters were not disclosed directly during the application process, and they were not disclosed indirectly through adherence to the Company's policies and procedures. Had the Company's policies and procedures been followed, the matters would have been documented and reviewable by investigators.

## IX. EVENTS IN 2014-2015

### A. The 2014 Settlement

***Summary: In the course of a mediation session on an EEOC charge alleging [REDACTED], a cocktail server at Wynn Las Vegas who recently had been terminated alleged to the Company's outside counsel that Mr. Wynn had raped her. There is evidence that outside counsel promptly informed Attorney Tourek (general counsel for Wynn Las Vegas at the time) and Maurice Wooden (president of Wynn Las Vegas at the time) of the allegation. Outside counsel also promptly drafted a memorandum addressed to Attorney Tourek summarizing the sexual assault allegation. The memorandum was forwarded by Attorney Tourek to Attorney Donald Campbell, who then forwarded it to Attorney Sinatra (general counsel for Wynn Resorts at the time). A settlement agreement in the amount of \$9,000 was reached between the complainant and the Company, and the complainant signed a release of claims.***

In 2013, "Debbie," a cocktail server at Wynn Las Vegas who had been recently terminated from her position, filed an EEOC charge against the Company, claiming [REDACTED]

<sup>367</sup> [REDACTED] Attorney Schreck told investigators that he was not involved in assisting Mr. Wynn with the process of completing his application submitted to the MGC. *Id.* [REDACTED]

<sup>368</sup> Further, the truth of the retractions should be evaluated in the context of whether they were a *quid pro quo* for a substantial sum of money.

[REDACTED]

[REDACTED] against the Company which was resolved in 2012 through mediation.<sup>369</sup>

On June 12, 2014, Attorney Scott Abbott, the Company's outside employment counsel from the law firm of Kamer Zucker Abbott (KZA), filed a notice with the EEOC stating that he and the KZA law firm were representing the Company in the matter, and that the Company had elected to mediate the dispute.<sup>370</sup> On June 25, 2014, Attorney Abbott and two Company representatives participated in a mediation session regarding the EEOC charge, along with Debbie and the mediator. Mr. Wynn was not a party to the EEOC matter; Attorney Donald Campbell, who took the position that he was acting as Mr. Wynn's attorney,<sup>371</sup> did not attend the mediation, and the IEB learned during the course of the Nevada litigation that Attorney Campbell was not even aware of the mediation until after it occurred.<sup>372</sup> Debbie was not represented by counsel. During the mediation session, Debbie asserted that she had been raped by Mr. Wynn in 2005. Mr. Wynn has vehemently denied, through counsel and through a written statement provided to the IEB, any allegation of non-consensual sex.<sup>373</sup>

Attorney Abbott informed investigators that the day after the mediation session, on June 26, 2014, he had a conference call with Attorney Tourek (senior vice president and general counsel of Wynn Las Vegas and global compliance officer for Wynn Resorts at the time, but no longer with the Company) and Maurice Wooden (president of Wynn Las Vegas at the time, but no longer with the Company) regarding the mediation session. According to Attorney Abbott's statement to investigators, during the conference call, he told Attorney Tourek and Mr. Wooden about the mediation session and Debbie's allegation of rape by Mr. Wynn,<sup>374</sup> and it was "very clear" in Mr. Abbott's mind that both Mr. Wooden and Mr. Tourek understood Debbie had made a rape allegation.<sup>375</sup> Billing records from KZA reflect the June 26, 2014 call and its

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<sup>369</sup> [REDACTED] The Company provided the IEB with copies of the two [REDACTED] charges in response to the IEB's requests for information as part of this investigation. Id.

<sup>370</sup> [REDACTED]

<sup>371</sup> In the Nevada litigation, counsel for the Company took the position that Attorney Campbell represented the Company.

<sup>372</sup> [REDACTED]

<sup>373</sup> [REDACTED]

<sup>374</sup> [REDACTED]

<sup>375</sup> Id. [REDACTED]

participants,<sup>376</sup> and a second call the next day regarding the matter included at least Mr. Wynn, Attorney Campbell, Attorney Abbott, and Attorney Tourek.<sup>377</sup>

On June 27, 2014, Attorney Abbott summarized the mediation session in a memorandum addressed to Attorney Tourek (hereinafter referred to as the "Abbott Memorandum").<sup>378</sup> The Abbott Memorandum explained that:

*The mediator came back and asked if I would meet with [Debbie] privately, with the mediator also present, but without the company's representatives . . . [Debbie], the mediator and I then met privately for approximately 2 hours. Most of the time involved [Debbie] going through a handwritten journal she had kept about the various workplace incidents which she believed were evidence of her being singled out and harassed. A main source of disagreement revolved around [Debbie's] termination from employment in December 2013. I explained to her that we had surveillance video and the company's position was that the decision to terminate her was completely proper and justifiable.*

Following that background, the Abbott Memorandum then recounted Debbie's allegation as follows:

*[Debbie] then told me that she had information that would be embarrassing to certain individuals if this matter proceeded forward and we could not resolve it. When I reminded her that she had previously released all claims against the company when she signed the General Release in 2012, she asked me "Even criminal?" I told her all claims were released. She appeared to process that for a moment and then blurted out, "Steve Wynn raped me."*

Debbie went on to explain that the incident occurred in Mr. Wynn's villa in 2005.

The Abbott Memorandum also recounted that before making this rape allegation to Attorney Abbott, Debbie had told the mediator that Mr. Wynn had "done the same thing" to Connie, and that Connie had gotten a car but Debbie had not, despite being promised one. As reflected in Section VI of this report, investigators have determined that Connie did not allege rape, but instead alleged having consensual sexual relations with Mr. Wynn and later sought and received a financial settlement from the Company.

The Abbott Memorandum went on to describe Attorney Abbott's response to Debbie when she voiced her allegation of rape.

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<sup>376</sup> [REDACTED]

<sup>377</sup> Id.

<sup>378</sup> [REDACTED]



*I explained to [Debbie] how dangerous her allegation was, and the company and Mr. Wynn would definitely not take it lightly. I reminded her of the Joe Francis defamation verdict that was recently upheld for millions of dollars, and told her that should be a signal to her that the company and Mr. Wynn would actively pursue claims against individuals who were untruthful and tried to damage or harm them. I added that she would not like to see herself on the receiving end of a lawsuit by Mr. Wynn.*

The Abbott Memorandum describes that, following Attorney Abbott's warning, Debbie explained that she just wanted to move to [REDACTED] where she had family. Debbie told IEB investigators that she does have family in [REDACTED] but did not recall making a statement to Attorney Abbott about moving there. The Abbott Memorandum also indicated that Debbie said, "Just throw the dog a bone, a little bone." Debbie told IEB investigators that she "would never say anything like that."

Email documentation confirms that Attorney Tourek sent the Abbott Memorandum to Attorney Campbell on the same day it was written, June 27, 2014, at 11:13 P.M. On the next day, June 28, 2014, Attorney Campbell forwarded the Abbott Memorandum to Attorney Sinatra. Attorney Sinatra responded to Attorney Campbell shortly thereafter indicating that she had spoken with Attorney Tourek and that she would be available to discuss the matter the next day.<sup>379</sup>

When initially interviewed by the IEB on April 19, 2018, Mr. Wooden told investigators that no allegations regarding sexual misconduct by Mr. Wynn had ever come to his attention.<sup>380</sup> In a later interview with IEB investigators on July 10, 2018, Mr. Wooden stated that he had no memory of Debbie's rape allegation, although he admitted he must have been on the June 26, 2014 call if Attorney Abbott said that he was.<sup>381</sup>

IEB investigators asked Attorney Sinatra in August of 2018 if she was informed of the matter involving Debbie in 2014. Attorney Sinatra answered, "I don't remember if I knew in '14."<sup>382</sup> She also denied she was aware of the existence of the Abbott Memorandum.<sup>383</sup> The IEB later arranged for Attorney Sinatra to view a copy of the Abbott Memorandum and her June 28,

379 [REDACTED]

380 [REDACTED]

381 [REDACTED]

382 [REDACTED]

383 [REDACTED]

Id [REDACTED]

2014 email exchange with Attorney Campbell. Her attorney informed investigators that "Ms. Sinatra has no recollection of the email exchange, receiving or reviewing the memo, or a discussion with Mr. Campbell."<sup>384</sup>

The Company did not provide any evidence that there was any investigation or other follow-up on Debbie's allegation. Attorney Stacie Michaels, vice president and assistant general counsel for Wynn Las Vegas at the time,<sup>385</sup> was interviewed by IEB investigators and asked whether an employee getting a memorandum from outside counsel with an allegation of rape by the CEO and not doing anything about it would be a violation of the Wynn policies and procedures. Attorney Michaels responded, "Yeah, it should have been reported."<sup>386</sup>

Debbie and Wynn Las Vegas ultimately settled the 2014 EEOC charge for \$9,000 on or about July 15, 2014.<sup>387</sup> Debbie signed a release of claims. The settlement was paid by the Company.

The Company produced an email which Cindy Mitchum sent to Attorney Campbell years later, on February 9, 2018, following publication of the *WSJ* article. Ms. Mitchum was Mr. Wynn's longtime executive assistant when he was still at the Company. In the email, Ms. Mitchum informed Attorney Campbell of a telephone conversation she had that day with a woman who identified herself as Debbie. According to Ms. Mitchum's email to Attorney Campbell, Debbie called her and told her that a reporter had been following her and wanted her to say negative things about Mr. Wynn, that she loves Mr. Wynn and is not going to speak to the reporter, and that she needs to know what Mr. Wynn wants her to do.<sup>388</sup> Investigators had a follow-up discussion with Debbie. She confirmed that she called Ms. Mitchum but stated that she never told Ms. Mitchum that she loved Mr. Wynn, indicating she would never say that. Debbie became upset at learning how Ms. Mitchum characterized their conversation, and started to cry.

In sum, there is evidence that in late June of 2014, an allegation of rape by Mr. Wynn of an employee was brought to the attention of the Company's outside counsel, the Wynn Las

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<sup>384</sup> [REDACTED]

<sup>385</sup> Attorney Michaels recently resigned from her position with the Company, effective November 23, 2018.

<sup>386</sup> [REDACTED]

<sup>387</sup> [REDACTED]

<sup>388</sup> [REDACTED]

Vegas general counsel, the Wynn Las Vegas president, the Wynn Resorts general counsel, and Mr. Wynn himself. Yet the allegation was not investigated. Rather, the allegation was treated in a dismissive manner, and there is no evidence that anyone at the Company even suggested investigating the matter or taking other action. The EEOC charge was settled, and no documentation of the allegation was placed in a personnel or other centralized file.

#### **IEB's Findings from Events in 2014**

##### **➤ *Company executive knowledge***

- The investigation has revealed that there is evidence of knowledge on the part of the following Company executives **in 2014** that Debbie had claimed that Mr. Wynn raped her. None of these executives are currently employed by the Company:

- Stephen Wynn (former CEO and Chairman of the Board; Mr. Wynn no longer has associations with the Company)
- Kevin Tourek (former general counsel at Wynn Las Vegas and global compliance officer for Wynn Resorts; Attorney Tourek is no longer employed by the Company)
- Maurice Wooden (former president of Wynn Las Vegas; Mr. Wooden is no longer employed by the Company)
- Kimmarie Sinatra (former general counsel at Wynn Resorts; Attorney Sinatra is no longer employed by the Company)

#### **Significant Issues from Events in 2014**

Below are the issues which the IEB suggests the Commission consider in evaluating the ongoing suitability of Wynn Resorts, Limited as an entity qualifier for the Massachusetts licensee.

- The Company failed to conduct an investigation or check for other allegations of sexual misconduct when a complaint of rape was made against the CEO and Chairman.
- The Company failed to document the events and record them in a personnel or other centralized file.

- There was a continued failure to train Mr. Wynn regarding the Company's Sexual Harassment policy.<sup>389</sup>
- The IEB finds it troubling that Attorney Tourek, general counsel for Wynn Las Vegas at the time (but no longer with the Company), was aware of the prior allegations in 2006 that led to the \$975,000 settlement, and was also aware of the prior allegation in 2008 and the 2008 settlement for \$700,000, yet he still failed to take any action or require any sort of investigation into the matter which was brought to his attention in 2014.
- The IEB also finds it troubling that Attorney Sinatra, general counsel for Wynn Resorts at the time (but no longer with the Company), was aware of the prior allegation from 2005, received the Abbott Memorandum which recounted an additional allegation by Debbie, and appears to have discussed the 2014 matter with Attorney Tourek, yet still failed to take any action or require any sort of investigation. (Attorney Sinatra claims to have no recollection of the 2014 matter).
- The IEB notes that the award of the Region A gaming license to Wynn MA, LLC occurred on September 17, 2014, a mere three months after Debbie's allegation of rape by the Company's CEO and Chairman, and no disclosure was made to the MGC prior to the award of the license to the Company.

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<sup>389</sup> Attorney Sinatra told investigators that Attorney Tourek had claimed to have trained Mr. Wynn on the Sexual Harassment policy. [REDACTED] There are no records to corroborate this, and Attorney Tourek told IEB investigators that he had no recollection of Mr. Wynn being trained on the policy. See [REDACTED]  
[REDACTED]

## B. The Three 2014-2015 Spa Complaints

***Summary:*** Over an approximately six month period in 2014-2015, two massage therapists at the Company's spa lodged three separate complaints to the spa director regarding Mr. Wynn's inappropriate conduct during massage sessions that made the massage therapists uncomfortable and violated state regulations regarding draping procedures. The spa director reported each complaint to Brian Gullbrants (executive vice president and general manager of Wynn Las Vegas at the time; he is currently the executive vice president of operations at Encore Boston Harbor), who in turn reported the details of each complaint to Maurice Wooden (president of Wynn Las Vegas at the time). Mr. Wooden, in turn, informed Matthew Maddox (president of Wynn Resorts at the time; he is currently president, CEO, and director of Wynn Resorts) of a single complaint, which did not raise significant alarm to Mr. Maddox, though he directed Mr. Wooden to instruct Mr. Wynn to discontinue the conduct.<sup>390</sup>

During this investigation, investigators interviewed the executive director of the Wynn and Encore spas in Las Vegas. At the time of the interview, she had been working for the Company for five years. She stated that prior to her current position, which she had been in since October of 2016, she was the director of the Encore spa. She told investigators that for a three to six month period in 2014-2015, the Wynn spa was under renovation. Usually Mr. Wynn frequented the Wynn spa, but during the three to six month period of its renovation, he utilized the services of the Encore spa.

Investigators asked her if she had ever received any complaints regarding Mr. Wynn and she replied that she had received three complaints about him. Each of the three complaints originated from Mr. Wynn's visits with Encore massage therapists. She described each complaint and the action she took in turn.

1. Complaint Number 1: In around 2014, while the director of the Encore spa, she received a complaint from a massage therapist, "Emma," who complained to her that Mr. Wynn was inappropriate in the way he wanted to be draped (i.e., covered) during a massage, and that he wanted to be draped in a way that was described by the employee as "inappropriate" and "not conservative." At that time (in around 2014), the massage therapist did not elaborate further about Mr. Wynn's conduct to the director. According to the director, she reported the matter to Blake Feeney, the executive director of spa operations,<sup>391</sup> who notified Brian Gullbrants,

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<sup>390</sup> [REDACTED]

<sup>391</sup> Mr. Feeney was with the Company for a short period (approximately six months), and left in 2014.

executive vice president and general manager at Wynn Las Vegas. Mr. Gullbrants called the director, spoke with her, and indicated that he had notified Maurice Wooden, president of Wynn Las Vegas, and that the matter would be taken care of. At that time, Mr. Wynn continued to schedule massages with Emma. The director asked Emma whether she was sure she wanted to continue to provide massage services to Mr. Wynn given his previous behavior, and Emma told her she was "okay with it."

2. Complaint Number 2: The executive director told investigators that Emma made a second complaint about Mr. Wynn. The second complaint concerned Mr. Wynn's behavior during a couple's massage with his wife, Andrea Wynn, that took place in the same three to six month time period as the conduct alleged in complaint number 1.

The executive director explained to investigators that the procedure for a couple's massage is for the couple to first meet in the hallway. The massage therapists then escort the couple together to the massage therapy room. In this instance, however, Mr. Wynn arrived before his wife and wanted to go back to the therapy room in advance of her with one of the two massage therapists. According to the executive director, "his request was considered abnormal to us" but Emma escorted him to the room anyway. While Emma was walking him to the therapy room, Mr. Wynn stated, as alleged by Emma, that he "just wanted to ensure that he had a very relaxing, sensual massage." The executive director characterized the alleged request for a "sensual massage" as follows: "it does not sound the most appropriate by any means but . . . it was all based on perspective." The executive director also stated that Emma perceived the alleged request to be inappropriate. The executive director told investigators that she reported this incident to Mr. Gullbrants and that he said he was going to report it to Mr. Wooden as had reportedly occurred after complaint number 1. She also indicated that Mr. Gullbrants inquired of her about the well-being of the employees and that he wanted to make sure that they felt safe.

Emma later went to the spa director and reported to her that Mr. Wynn was calling her directly on her personal cell phone and she did not know how he got her phone number. The spa director also reported this to Mr. Gullbrants and Mr. Feeney and soon after Mr. Wynn stopped calling Emma on her personal cell phone.

IEB investigators interviewed Emma who told investigators the following about the couple's massage session with Mr. Wynn and his wife.<sup>392</sup> Emma confirmed that Mr. Wynn arrived before his wife and asked to go immediately to the massage room, which was "not typical," but that she escorted him anyway. Once in the massage therapy room, she said that Mr. Wynn immediately dropped his robe on the floor exposing his naked body in a way that made Emma believe "he kind of wanted to." She said that he began to get on top of the massage table, including getting on top of the bottom sheet, the top sheet, and the blankets. According to Emma's statement to investigators, she quickly maneuvered to pull the blankets back in order to cover Mr. Wynn with them but he said that he did not like them and only wanted the "smallest, lightest thing" that she had. According to Emma, Mr. Wynn "sure did not like that sheet." She said that Mr. Wynn would not place his head in the headrest either. Instead, Emma said that placed his head on its side on the massage table so that he was able to look in Emma's direction.

Soon, Mr. Wynn's wife arrived, but Emma said his inappropriate behavior continued. Emma told investigators that she would go to one side of the massage table and she would see Mr. Wynn's genitals exposed. She would then move to the other side, and Emma said that Mr. Wynn would expose his genitals from there as well. It appeared to Emma that Mr. Wynn did this in an "intentional" way. She told investigators that it was as if she was "being chased" and that she "danced around the table like a secretary from the '70s."

Emma told investigators that the massage therapist for Mr. Wynn's wife observed what was happening and that she looked at Emma during the massage session with an expression of shock as if to say, "What's going on?" This massage therapist confirmed the summary of Emma's allegations during a 2018 interview with the Company's employee relations department.<sup>393</sup>

Emma, an experienced massage therapist, told investigators that usually she is the one "in charge" of the therapy session. She expressed regret for not being more forceful in correcting Mr. Wynn, but she said, "Steve Wynn's his own force, and his name's on the building," "he's the CEO . . . and he's freaking me out." Also, although she found the experience "shocking," Emma

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<sup>392</sup> Emma told IEB investigators that her first massage session with Mr. Wynn was the couple's massage that included Mr. Wynn's alleged request for a "sensual massage" and which also involved an alleged draping issue.

<sup>393</sup> [REDACTED]

did not want to create a scene during the therapy session in front of Mr. Wynn's wife who was on the nearby massage table in the same room and who "just ignored it."

Emma indicated that she had two or three additional massage sessions with Mr. Wynn and that they occurred in his office and in the spa. She described that during the sessions in his office, he was "more overt," "trying to insist on no coverings," and that "it got kind of progressive, where each one was more insistent" with directives for "more inner thigh work, more abdominal work," and phrases like, "You know, just close your eyes and relax and turn the lights off and just do whatever feels good." Although he never explicitly directed Emma to touch his genitals, Emma said that she felt "it was implied." Emma further confirmed that she received a call at home from someone from Mr. Wynn's office who then put Mr. Wynn on the phone. He asked her for a massage session on a certain date but she was scheduled for a day off on that date and declined. She said that he suggested another session for when he returned from his upcoming business trip to China. Emma did not know how he got her personal telephone number. She told investigators that she informed the spa director of the call and told her that his contacting her directly in that manner was "not okay." Mr. Wynn never called Emma directly again, leading Emma to believe that the matter was handled at some level. Emma acknowledged to investigators that she did not tell the director the full details in 2014 and it was not until recently (February 2018) that she provided additional details to the employee relations department when interviewed by them.<sup>394</sup> She further indicated that she decided to come forward because of "this whole process, that someone else decided to put a voice to it."

3. Complaint Number 3: After complaint numbers 1 and 2 and during the same three to six month time period, the spa's lead massage therapist called the director (now executive director) at home one evening. The lead massage therapist reported that "Fran," a massage therapist, told her about inappropriate behavior by Mr. Wynn that made Fran uncomfortable. Fran was crying when she told the lead massage therapist about this matter. The director spoke with Fran who reported that during massage sessions with Mr. Wynn, he would remove the draping and cover himself with only a small towel. This practice violated state regulations governing the practice of massage therapists. The executive director told investigators that in addition to making the therapists uncomfortable, the lack of draping posed a risk to the massage

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394 [REDACTED]



therapists' licenses and consequently their livelihoods. She considered Fran's complaint as "the last straw," and confirmed to IEB investigators that she reported these complaints verbally to Mr. Gullbrants but that she had no written documentation of them. Mr. Gullbrants later indicated to Fran that he informed Mr. Wooden of this complaint.

IEB investigators contacted Fran who indicated that she was willing to speak with investigators but that she was represented by an attorney. IEB investigators reached out to Fran's counsel but received no communication in return.

The Company's employee relations department interviewed Fran on two occasions in February of 2018, after the publication of the *WSJ* article. The Company provided the IEB investigators with its report on the interviews with Fran.<sup>395</sup> During the interview with the Company on February 8, 2018, Fran stated that her first massage with Mr. Wynn took place in the massage room attached to his office. When she entered his office, he was wearing only a towel around his torso and appeared as if he had just gotten out of the shower. Fran said during the ER interview that he led her to the massage room and was covered only by the towel during the massage. During the massage, he continued to say that he wanted to remove the towel, but Fran told him that did not make her feel comfortable because the state licensing requirements mandate that he be properly draped. Fran told the employee relations department that Mr. Wynn made additional inappropriate comments during the massage that made her uncomfortable. She reported that he would say, "Close your eyes and feel the music" and "Let go." He wanted Fran to focus on his inner thighs, legs, and glutes and would try to get her closer and closer to his genital area. She would not comply, and he commented, "This massage is getting more expensive by the minute." She reported that his requests "freaked her out." At the close of the first massage, he stood up and for a brief moment his naked body was fully exposed before he recovered himself with the towel. He handed Fran a \$1,000 cash tip.

The Company's employee relations department interviewed Fran again on February 9, 2018 regarding her second and third massage appointments with Mr. Wynn. Fran stated that the second massage appointment also took place in Mr. Wynn's office and was similar to the first appointment. He did not want to remain covered during the massage and he spoke to her "seductively" by repeating things like, "Close your eyes and feel the music" while "moaning,"

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395 [REDACTED]

"Oh yea[h] . . . ." At the end of the second massage service, Mr. Wynn again handed Fran a \$1,000 cash tip. This time, though, he grabbed her by the waist and leaned in to kiss her. She turned her head and the kiss landed on her cheek.

Fran confirmed to the employee relations department that she reported the matter to the director (now executive director) and that within just a few days the director circled back with her to confirm that Mr. Wooden would speak to Mr. Wynn and that she was not required to provide any more massage services to Mr. Wynn.

Fran did accept a third appointment with Mr. Wynn. She told the employee relations department that the third appointment took place in the Encore spa. Again, Mr. Wynn tried to have the service without any draping. Fran reported that she was "fed up" and spoke firmly to Mr. Wynn. She showed him her state license and said if the state regulators come in and see him not covered properly she could get in trouble. Mr. Wynn did not seem to take her seriously and replied in a joking manner, "Oh, just throw a towel over my head if they come in," and then laughed. Fran explained that Mr. Wynn still spoke to her "seductively" during this third appointment, but he did not try to undrape himself as he had in the two previous appointments.

Fran stated in the interview with the employee relations department that Mr. Wynn requested a fourth appointment with her, but she declined, and he never requested her services again.

The employee relations department asked Fran why she never complained directly to the human resources department. Fran answered that she was scared and that she is a single mother and was afraid of losing her job if she reported anything directly to HR.

The Company provided IEB investigators with a copy of a demand letter dated April 5, 2018, which was filed by Fran through counsel.<sup>396</sup> The demand letter sets forth allegations that are largely consistent with the recitation of the allegations detailed in complaint number 3 above.<sup>397</sup> The demand letter concluded with a settlement offer in the amount of \$1 million to be paid to Fran.<sup>398</sup> The matter has now been settled with Mr. Wynn; the Company and the IEB are not aware of the terms of the settlement apart from a term releasing the Company from all claims.

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<sup>396</sup> [REDACTED]

<sup>397</sup> Id. [REDACTED]

<sup>398</sup> Id. [REDACTED]

#### 4. Information Obtained from Mr. Gullbrants<sup>399</sup>

IEB investigators interviewed Mr. Gullbrants on two occasions.<sup>400</sup> Mr. Gullbrants is now the executive vice president of operations at Encore Boston Harbor.<sup>401</sup> Mr. Gullbrants indicated that he recalled the spa director reporting two spa-related complaints regarding Mr. Wynn to him. To his recollection, the first complaint involved Mr. Wynn's draping preference during massages, which Mr. Gullbrants recalled as a preference to be covered by a towel instead of a sheet.<sup>402</sup> Although towel draping rather than sheet draping was contrary to the spa's practice and made employees uncomfortable, Mr. Gullbrants did not view that particular matter as egregious.<sup>403</sup> Mr. Gullbrants stated that to his understanding, the preference for towel draping did not involve any nude exposure and was the type of request that could be accommodated for a VIP guest, so long as it did not break the rules and was not wrong.<sup>404</sup> Nevertheless, Mr. Gullbrants called Mr. Wooden about it.<sup>405</sup> He also checked in with the director out of concern for spa staff, to make sure they felt safe.<sup>406</sup>

Mr. Gullbrants told investigators that he also recalled that the second complaint from the director involved Mr. Wynn's draping request, to use a towel instead of a sheet, and that it was made during a couple's massage with his wife, and also included a request by Mr. Wynn for a "sensual massage."<sup>407</sup> To Mr. Gullbrants, this was "not okay."<sup>408</sup> Mr. Gullbrants stated that he told the director that he would call Mr. Wooden, which he did.<sup>409</sup> According to Mr. Gullbrants, Mr. Wooden's initial response was, "Oh shit!"<sup>410</sup> Mr. Gullbrants interpreted Mr. Wooden's reaction as attributable to this being the second complaint involving Mr. Wynn's behavior with a massage therapist to reach Mr. Wooden.<sup>411</sup> According to Mr. Gullbrants, Mr. Wooden said that

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<sup>399</sup> Mr. Gullbrants is currently working at Encore Boston Harbor under a temporary license.

<sup>400</sup> [REDACTED]

<sup>401</sup> [REDACTED]

<sup>402</sup> Id. [REDACTED]

<sup>403</sup> Id. [REDACTED]

<sup>404</sup> Id. [REDACTED]

<sup>405</sup> Id. [REDACTED]

<sup>406</sup> Id. [REDACTED]

<sup>407</sup> Id. [REDACTED]

<sup>408</sup> Id. [REDACTED]

<sup>409</sup> Id. [REDACTED]

<sup>410</sup> Id. [REDACTED]

<sup>411</sup> Id. [REDACTED]

he would "handle it."<sup>412</sup> Mr. Wooden later got back to Mr. Gullbrants and told him that it would not happen again.<sup>413</sup> Mr. Gullbrants did not know precisely what Mr. Wooden did to address the situation.<sup>414</sup> Mr. Gullbrants explained to IEB investigators that he did not report either of the two complaints to the Company's human resources department. He explained that according to his understanding, if a report of sexual harassment was made against one of his subordinates, he would be responsible for reporting it to the human resources department.<sup>415</sup> If, on the other hand, a report of sexual harassment was made against an employee that did not fall in his chain of command, he would satisfy his responsibilities by elevating the report to Mr. Wooden, the president of Wynn Las Vegas.<sup>416</sup> Mr. Gullbrants stated that he believed that Mr. Wooden would involve the human resources department, the employee relations department, or the corporate investigations department, as appropriate.<sup>417</sup>

Mr. Gullbrants confirmed that he reported the spa related complaints to Mr. Wooden verbally, and was not aware of any written documentation.<sup>418</sup>

During the second interview with Mr. Gullbrants, during which he was told that the director indicated reporting three incidents to him, he stated that there may have been three incidents reported by her to him but that he specifically recalled only two incidents.<sup>419</sup> He further deferred to the director's recall of the reporting but had no independent recollection of a third complaint.<sup>420</sup> He further confirmed that the more recent of the two incidents involved complaints during the couples massage of a "sensual massage" request and inappropriate draping which exposed Mr. Wynn.<sup>421</sup> Mr. Gullbrants stated that in both instances that he recalled, he immediately reported each incident to Mr. Wooden.<sup>422</sup> When asked about any complaints received about Mr. Wynn contacting the massage therapists directly by telephone, he replied that he did recall the spa director bringing that to his attention but he could not recall if that

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<sup>412</sup> Id. [REDACTED]

<sup>413</sup> Id. [REDACTED]

<sup>414</sup> Id. [REDACTED]

<sup>415</sup> Id. [REDACTED]

<sup>416</sup> Id. [REDACTED]

<sup>417</sup> Id. [REDACTED]

<sup>418</sup> [REDACTED]

<sup>419</sup> [REDACTED]

<sup>420</sup> Id. [REDACTED]

<sup>421</sup> Id. [REDACTED]

<sup>422</sup> Id. [REDACTED]

information was part of the two or three spa complaints or was completely separate.<sup>423</sup> In either case, Mr. Gullbrants stated that anything to do with Mr. Wynn, he would have elevated or "uplined" that information to Mr. Wooden, but he did not have a specific recollection of doing so with respect to the phone calls.<sup>424</sup>

During the second interview with the IEB, investigators asked what he specifically told Mr. Wooden about the draping and sensual massage complaint.<sup>425</sup> Mr. Gullbrants stated that whatever the director told him, he reported that immediately to Mr. Wooden.<sup>426</sup> Mr. Gullbrants recalled that she told him that the towel was either falling off or he was taking it off and that Mr. Wynn was exposed and the employees were asking him to put it back on as it fell off more than once.<sup>427</sup> Mr. Gullbrants further detailed that the event was significant enough in his mind that he recalls where he was (on the spa level outside his office) when he called Mr. Wooden to inform him of this second incident.<sup>428</sup> He further indicated that he thought of this most recent incident as serious and more than simply a towel vs. sheet preference for Mr. Wynn and that was articulated to Mr. Wooden in the call.<sup>429</sup> Mr. Gullbrants thought to himself as he called Mr. Wooden, "Holy crap, this is crazy."<sup>430</sup> He told Mr. Wooden, "We had the draping issue before, well here it is again and now there's something else and I think it's weird. Like, this is not good."<sup>431</sup> He stated that Mr. Wooden's response was "Yeah, oh shit, this is not good."<sup>432</sup> Mr. Gullbrants stated that Mr. Wooden indicated that he would take care of the matter and later called Mr. Gullbrants back and informed him that it was taken care of and was not going to happen again.<sup>433</sup>

##### 5. Information Obtained from Mr. Wooden

IEB investigators interviewed Mr. Wooden on two occasions. During the first interview on April 19, 2018, following questioning about the handling in general of allegations of

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<sup>423</sup> Id.  
<sup>424</sup> Id.  
<sup>425</sup> Id.  
<sup>426</sup> Id.  
<sup>427</sup> Id.  
<sup>428</sup> Id.  
<sup>429</sup> Id.  
<sup>430</sup> Id.  
<sup>431</sup> Id.  
<sup>432</sup> Id.  
<sup>433</sup> Id.

workplace sexual harassment or misconduct, investigators asked Mr. Wooden about past allegations from employees regarding sexual misconduct or inappropriate sexual behavior by Mr. Wynn.<sup>434</sup> Mr. Wooden responded that there had been no allegations regarding Mr. Wynn.<sup>435</sup> He said this despite evidence previously described regarding Mr. Wooden's knowledge of the 2014 rape allegation by Debbie. Specifically, Mr. Wooden stated, "No, absolutely not . . . None, none whatsoever . . . Absolutely not."<sup>436</sup> Investigators then asked Mr. Wooden whether he ever received any information from Mr. Gullbrants regarding employee concerns about Mr. Wynn.

To this, Mr. Wooden responded as follows:

*I remember specifically one night that [Mr. Gullbrants] had called me. Um, and it was related to a towel versus a sheet and whether the employee had to, uh, had to allow Mr. Wynn to use a towel versus a sheet. And I said to [Mr. Gullbrants] . . . "Clearly, if the employee does not want to use a towel versus a sheet, she doesn't have to." And then, um, in the same conversation, he says, "Okay." He goes, "Well, I just want to make sure because, you know, they were in a sensual massage and the issue of using a towel versus sheet came up." And I said, "Okay." I said, "Again, going back to this, I will let Mr. Wynn know that this employee does not want to . . . service Mr. Wynn and, and provide a massage service if, in fact, you know, he's gonna continue to wear a towel versus wearing a sheet." That was it.<sup>[437]</sup>*

When asked if he considered this matter to be an HR issue, he answered that "there was nothing there to indicate there was an HR issue" but that he did reach out to Mr. Maddox, who at the time was president of Wynn Resorts (and is currently president, CEO, and a member of the Company's board of directors).<sup>438</sup> Mr. Wooden informed Mr. Maddox that he would talk to Mr. Wynn to "let him know that . . . this had come about."<sup>439</sup> Mr. Wooden then described his conversation with Mr. Wynn as follows:

*I talked to [Mr. Wynn]. I[] said that, uh, you know, there was a concern with a ... massage therapist who said that they didn't want to do massages with towels. "And Steve, are you doing [it] with towels?" He goes, "Well," he goes, "I've done it with towels before. What's what's the issue?" It's like, "Well, they prefer, you know, the sheet versus the towel." He says, "That's fine." He goes, "I*

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435 Id.

436 Id.

437 Id.

438 Id.

439 Id.

*understand." He goes, "Tell them I'll, I'll use the sheet instead of the towel." That was it.*<sup>[440]</sup>

Investigators asked Mr. Wooden if there was a distinction in his mind between the matter reported to him by Mr. Gullbrants on the one hand, and sexual misconduct/sexually inappropriate behavior on the other hand. He replied, "I do, I do [make a distinction]."<sup>441</sup> When asked whether he ever received any other similar reports either from Mr. Gullbrants or anyone else about Mr. Wynn, Mr. Wooden replied, "Nobody has ever brought anything to me. Absolutely not...hundred percent not. Not to me."<sup>442</sup> Mr. Wooden further stated that he was confident that this was the only incident reported to him by Mr. Gullbrants involving spa complaints regarding Mr. Wynn's behavior:

[Question]: *Have you ever had to have that...a similar conversation with Steve Wynn about either his behavior, his requests, or, or even anything along those lines? Have you ever had any...had to address any other issues with him?*

[Wooden]: *As far as sexual conduct...*

[Question]: *Yes.*

[Wooden]: *...or misconduct? Absolutely not.*

[Question]: *Anything specific to the type of massage or, or an employee complained about...*

[Wooden]: *No.*

[Question]: *...something they thought might have been inappropriate or...?*

[Wooden]: *No, no, absolutely not.*

[Question]: *Okay. So you think that the only time that you had any conversation with anyone was just the one time, and you had a direct conversation with Steve Wynn...*

[Wooden]: *I did.*<sup>[443]</sup>

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<sup>440</sup> Id. [REDACTED]  
<sup>441</sup> Id. [REDACTED]  
<sup>442</sup> Id. [REDACTED]  
<sup>443</sup> Id. [REDACTED]

During his second interview with IEB investigators on July 10, 2018, Mr. Wooden stated that when Mr. Gullbrants made the report to him, he had not been familiar with the term "sensual massage" and assumed it had something to do with a romantic aspect of a couple's massage in terms of mood and music.<sup>444</sup> Investigators specifically asked him whether in the course of Mr. Gullbrants' report to him, he learned that Mr. Wynn's genitals were exposed.<sup>445</sup> In response to this question, Mr. Wooden answered that he thought Mr. Gullbrants told him that the towel kept falling off and that's why the massage therapist wanted the sheet.<sup>446</sup> He also said that if the issue involved full exposure, it would have been more serious, but that he considered the issue as described to him to be a service issue.<sup>447</sup> Mr. Wooden again insisted that Mr. Gullbrants only reported one spa related incident involving Mr. Wynn to him.<sup>448</sup>

Mr. Wooden told investigators that he informed Mr. Maddox not only about a reported concern regarding Mr. Wynn's request for a "sensual massage," but also about a reported concern involving Mr. Wynn being covered only by a towel (instead of the sheet), and that the massage therapist did not want to provide massage services to him because the towel falls off.<sup>449</sup>

Mr. Wooden confirmed that he was not aware of any documentation of his discussions about these matters with Mr. Gullbrants, Mr. Maddox, or Mr. Wynn.<sup>450</sup>

#### 6. Information Obtained from Mr. Maddox

Investigators spoke to Mr. Maddox about this matter. Mr. Maddox recalled that Mr. Wooden told him only about the "sensual massage" request by Mr. Wynn, but did not tell him about the draping issue. During his interview with IEB investigators on July 2, 2018, Mr. Maddox stated the following:

[Maddox]: *So there were, the only issue that I recall was there was a request, I think I only know the date now because of a refresher, but it was, I think, 2014 or 2015. There was a request for a sensual massage by Steve and Andrea, a couples massage. Maurice [Wooden] called me and said, hey, some masseuses either don't want to do it or were uncomfortable and I said, Maurice, I don't even know what that is, but go tell Steve you know, no sensual -- Steve and*

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445 Id.

446 Id.

447 Id.

448 Id.

449 Id.

450 Id.



*Andrea, no sensual massages. Maurice said he did. It was kind of reported back that, oh, what I meant was I didn't want a deep tissue, we would like the Swedish-style massages. Okay. Well, whatever. But knock it off. Whatever that meant, people were really uncomfortable.*

[Question]: *When you say, knock it off, did you say that to Maurice or to Steve?*

[Maddox]: *No, to Maurice. And Maurice said he told Steve that. And then he came back to me with that answer, and I said, well, let's – no more. Right? Maurice, let's keep an eye on it. And I didn't think twice about it. I really didn't. Because it was a couples massage, Steve and his wife. I didn't think twice about it.*

[Question]: *Do you recall specifically what Maurice would have said to you about what the complaint was?*

[Maddox]: *I do. He said...*

[Question]: *Anything regarding draping or covering or anything like that?*

[Maddox]: *Not at that time. . . .*

[Question]: *So is it fair to say that, as you sit here today, you are sure that Maurice Wooden never told you that there was a complaint about Steve Wynn exposing himself to the massage therapist?*

[Maddox]: *Exposing himself?*

[Question]: *Showing his genitalia.*

[Maddox]: *I do not recall that. I mean, if I -- no.*

[Question]: *Are you sure he never told you that?*

[Maddox]: *Maurice, for sure, you know, he – no, there was – no one ever told me Steve Wynn was exposing his genitalia to somebody. No. No.<sup>[451]</sup>*

Mr. Maddox further indicated that he did not have any personal conversation with Mr. Wynn on the matter and that when Mr. Wooden asked him what he should do about the matter, he instructed Mr. Wooden, "I said go tell – because the way it was explained to me, right, I said,

Go tell Steve, you know, there's...I don't know what a sensual massage is, Steve and Andrea, but it's not on the menu. Right? There's Swedish and there's deep tissue. That's when it came back that, he was saying, 'Oh, we didn't want a deep tissue.'"<sup>452</sup>

Mr. Maddox told IEB investigators that before he joined the Company, he had never heard of Mr. Wynn engaging in sexual conduct with employees. His later knowledge about the 2005 matter is discussed in Section X of this report.

**IEB's Findings from Spa Events in 2014-2015**

➤ ***Company executive knowledge***

- The investigation has revealed that there is evidence that the following Company executives were aware **in 2014-2015** of one or more complaints of inappropriate conduct by Mr. Wynn during massage sessions.
  - Maurice Wooden (former president of Wynn Las Vegas; he is no longer employed by the Company)
  - Brian Gullbrants (executive vice president and general manager of Wynn Las Vegas at the time; currently the executive vice president of operations for Encore Boston Harbor)
  - Blake Feeney (former executive director of spa operations; he is no longer employed by the Company)
  - The IEB also notes that Mr. Maddox, president of Wynn Resorts at the time (and currently the president, CEO and a director for Wynn Resorts) was informed of one complaint about Mr. Wynn's request for a "sensual massage," but he understood it to be in the context of a couples massage and it did not raise significant alarm to him.

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<sup>452</sup> Id. [REDACTED]

### **Significant Issues from Spa Events in 2014-2015**

Below are the issues which the IEB suggests the Commission consider in evaluating the ongoing suitability of Wynn Resorts, Limited as an entity qualifier for the Massachusetts licensee:

- Certain executives with knowledge of any of the three complaints from massage therapists alleging inappropriate conduct by Mr. Wynn during massage sessions failed to comply with the Company's HR policy requiring investigation.
- The Company failed to document the events and record them in a personnel or other centralized file.

The IEB finds it particularly troubling that there is evidence that Mr. Wooden, former president of Wynn Las Vegas, was aware of Debbie's rape allegation made in 2014 (though he denied any such awareness to IEB investigators), yet he still failed to take any action or require any sort of investigation into the matters which were brought to his attention in 2014-2015 regarding allegations of inappropriate conduct by Mr. Wynn during massage therapy.

## **X. EVENTS IN 2016**

### **A. In 2016, the 2005 Settlement Becomes Part of the Ongoing Okada Litigation**

#### **1. Brief History of the Okada Litigation**

In 2002, around the time Wynn Resorts, Limited was first incorporated, Mr. Wynn and Aruze USA, Inc. entered into a Stockholders' Agreement connected to their ownership of shares in the Company. Among other things, the Stockholders' Agreement restricted the parties' ability to transfer their respective interests in the Company's stock. In 2010, as a result of Mr. and Ms. Wynn's divorce (for the second time), Ms. Wynn received approximately half of Mr. Wynn's stock in the Company, and she agreed to become a party to the Stockholders' Agreement.

In February of 2012, the Company's board of directors (which at the time included Mr. Wynn and Ms. Wynn) voted pursuant to its articles of incorporation to forcefully redeem the

Company stock owned by Aruze USA. Litigation instantly ensued and is referred to throughout this report as "the Okada litigation."<sup>453</sup>

In June of 2012, Ms. Wynn filed a crossclaim in the Okada litigation, claiming that, among other reasons, because Mr. Okada and Aruze USA were no longer stockholders in the Company, she too should be released from restrictions under the Stockholders' Agreement. Ms. Wynn amended her crossclaim several times over the next few years, reframing her arguments as to why the Stockholders' Agreement should be declared invalid. Multiple witnesses interviewed by the IEB described this period of litigation involving Ms. Wynn as "acrimonious," "nasty," and "bitter."<sup>454</sup>

At the Company's annual shareholders' meeting on April 24, 2015, Ms. Wynn failed to gain re-election to the Company's board of directors.<sup>455</sup> Several months later, in August of 2015, Ms. Wynn amended her crossclaim for a fourth time, this time adding claims that Mr. Wynn had breached his obligations under the Stockholders' Agreement in connection with her inability to obtain enough shareholder votes to retain her board seat.

## 2. Filing of Ms. Wynn's Fifth Amended Crossclaim

In the approximately one month period between February 22, 2016 and March 28, 2016, the Company received four versions of a draft fifth amended crossclaim from counsel for Elaine Wynn.<sup>456</sup> The draft versions contained language to the effect that Mr. Wynn had engaged in "reckless risk-taking behavior" and made reference to the existence of a prior settlement.<sup>457</sup> Three of the draft crossclaims included language that Mr. Wynn's behavior left him "vulnerable to extortion (which he has paid), his directors vulnerable to challenge that they misled Massachusetts gaming regulators, and the Company vulnerable to potential liability and regulatory exposure . . ."<sup>458</sup> These drafts were not publicly available.

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<sup>453</sup> The original 2013 MGC suitability report for Wynn MA, LLC also details the history of the Okada litigation.

<sup>454</sup>

[REDACTED]

[REDACTED]

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<sup>456</sup>

<sup>457</sup>

[REDACTED]

<sup>458</sup>

[REDACTED]

After receiving draft versions of the fifth amended crossclaim, Attorney Sinatra brought in Attorney Jonathan Layne from Gibson Dunn to guide the independent directors and provide them with advice regarding a response to the crossclaim. Attorney Sinatra told IEB investigators that the draft crossclaim had added her as a defendant, so she "didn't feel like, as the company's general counsel, that I could be helping them."<sup>459</sup> She also told IEB investigators that she directed Attorney Layne "to work with the board . . . as to whether or not I should keep my job, because there's some bad allegations made against me here."<sup>460</sup>

According to Attorney Layne, after reading the allegations in the draft crossclaim, he asked Attorney Sinatra about the reference in it to a settlement agreement.<sup>461</sup> Attorney Layne told IEB investigators that Attorney Sinatra responded to him that she was aware of a prior settlement agreement, that it was quite dated, that she had not been general counsel at the time, that she did not have all of the details associated with it, and that there had been conversations that took place with outside counsel with respect to disclosure obligations.<sup>462</sup> When Attorney Layne asked Attorney Sinatra which attorneys had been involved, she told him the attorneys were Attorney Schreck on the regulatory side and Attorney Coben on the non-regulatory side, and that their advice was that disclosure was not required.<sup>463</sup> Attorney Layne also told investigators that he had conversations with Attorney Tourek as well (general counsel for Wynn Las Vegas at the time; he is no longer with the Company), and that Attorney Tourek told him that the settlement structure included a retraction by the individual making the claims.<sup>464</sup> Attorney Layne further told investigators that he became aware (through Attorney Sinatra, Attorney Tourek, or both) that there was a full release of claims against the Company and that Company funds were not involved in the payment of the settlement amount.<sup>465</sup>

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Id. Attorney Schreck told investigators that he represented Mr. Wynn and the Company in the 2005 settlement agreement. Then-general counsel Rubinstein did not learn about the 2005 settlement agreement until the agreement was already signed. When he learned about it from the Company's legal invoices, he consulted with outside counsel Attorney Coben, but neither Attorney Rubinstein nor Attorney Coben was told that the original complaint by the employee involved an allegation of rape by Mr. Wynn.

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Id.

On or about March 14, 2016, Attorney Sinatra and Attorney Layne participated in a conference call with the independent directors on the subject of the crossclaim.<sup>466</sup> According to Attorney Layne, Attorney Sinatra was on the first part of the call, and she provided background information to the independent directors, including information on the 2005 settlement agreement.<sup>467</sup> Attorney Layne told investigators that Attorney Sinatra confirmed for the independent directors that there had in fact been a settlement, that it related to an allegation by a former employee, and that the allegation was retracted as part of the settlement.<sup>468</sup> When asked whether Attorney Sinatra explained the nature of the allegation to the independent directors, Attorney Layne said "it was relating to some sort of wrongdoing, a sexual, you know, wrongdoing, conduct."<sup>469</sup> Attorney Layne told investigators that during that call, the board members inquired whether there were other instances of allegations of misconduct against Mr. Wynn, specifically asking about hotline complaints,<sup>470</sup> and that Attorney Sinatra left the call with the assignment to figure out if there were other complaints.<sup>471</sup> Investigators asked Attorney Layne whether Attorney Sinatra mentioned anything during the conference call with the independent directors about the 2006 settlement agreement, the 2008 settlement agreement, or the 2014 rape allegation. Attorney Layne told investigators that she did not.<sup>472</sup> When asked whether that information would have been relevant to the board, Attorney Layne responded, "Absolutely."<sup>473</sup>

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<sup>466</sup> Id. [REDACTED] Attorney Layne could not remember whether Attorney Tourek participated. Id. [REDACTED] Attorney Tourek recalled that he "may have listened in on one or two" meetings between Attorney Layne and the independent directors in April or May. [REDACTED]

<sup>468</sup> Id. [REDACTED]

<sup>469</sup> Id. [REDACTED]

<sup>470</sup> Id. [REDACTED] The Company has always had a hotline where employees could report things anonymously. Up until recently, the instructions for the hotline focused on the reporting of financial and accounting misinformation and misconduct under the Sarbanes-Oxley Act, and did not direct employees to utilize the hotline for reports of sexual harassment. After the publication of the *WSJ* article, the Company re-wrote the instructions for the hotline to include instructions for the reporting of sexual harassment.

<sup>471</sup> Id. [REDACTED]

<sup>472</sup> As described earlier in the report, Attorney Sinatra told investigators that she had no knowledge about the 2006 and 2008 matters at the time and indicated, "I don't remember if I knew in 2014" regarding the 2014 matter. [REDACTED]

<sup>473</sup> Id. [REDACTED]

In her interview with the IEB, Attorney Sinatra was asked if she recalled having a call with the independent directors and providing background information to them on the 2005 settlement. She responded, "I don't know."<sup>474</sup> When asked if she remembered the independent directors asking her if there were additional incidents involving Mr. Wynn and asking her to look into it, she responded, "I don't know. But if they would have I would have."<sup>475</sup> When asked if anyone from Gibson Dunn (who was assisting the independent directors in 2016) asked her what she knew about the matter then or in or any other circumstance, she responded, "I don't know."<sup>476</sup> When asked if she had any recollection of any of the independent directors asking her what she knew about this, she responded, "I don't have any specific recollection."<sup>477</sup>

Investigators asked Attorney Sinatra about any follow-up actions she may have taken after the call. The exchange went as follows:

[Question]: *Did you at any point -- at this point did you look into it, whether or not this was a one-off? Did you ask any questions, talk to [Mr. Wynn]?*

[Sinatra]: *Again, I wasn't -- I had to recuse myself, because I was part of the accused. And so from my perspective, it's just like the investigations that are going on now. People don't want to tell me what it was other than to know what I knew. There was a whole bunch of people spending a whole bunch of money and time looking at this issue. And I was specifically shunted out of it because I was part of it.*<sup>[478]</sup>

Ultimately, on March 28, 2016, Ms. Wynn filed her fifth amended crossclaim with the court in the Okada litigation, adding new claims against Mr. Wynn, the Company, and the Company's general counsel, Attorney Sinatra.<sup>479</sup> The March 28, 2016 amended crossclaim included the following language:

*He [Steve Wynn] has engaged in reckless, risk-taking behavior, leaving himself vulnerable to allegations of serious wrongdoing – that he made a multi-million dollar payment and used Company resources to silence (sic) and that he did not properly disclose to the Board of Directors. This and other such decisions have*

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<sup>474</sup> [REDACTED]  
<sup>475</sup> Id. [REDACTED]  
<sup>476</sup> Id. [REDACTED]  
<sup>477</sup> Id. [REDACTED]  
<sup>478</sup> Id. [REDACTED]  
<sup>479</sup> [REDACTED]

*left the directors and the Company vulnerable to potential liability and regulatory exposure.*<sup>[480]</sup>

Further on, the crossclaim reads:

*Among other things, Ms. Wynn learned that Mr. Wynn, using the services of a private criminal defense attorney and a private gaming attorney, had previously made a multimillion dollar payment after apparently being threatened with allegations of serious misconduct occurring on Company property against a Wynn Resorts employee. When Ms. Wynn made inquiries of Ms. Sinatra, the Company's General Counsel, Ms. Sinatra stated that Mr. Wynn had decided that the matter should not be disclosed to the Board or other Company counsel even though Mr. Wynn, as the Chairman and CEO of a public company, had exposed himself to sufficiently serious allegations of wrongdoing that he had been forced to pay millions of dollars and had used Company resources to conceal the allegations.*<sup>[481]</sup>

3. *The Company Commissioned an Analysis of a Potential Defamation Claim against Ms. Wynn and her Attorneys*

Attorney Layne told investigators that as part of the Company's preparation for developing a response to Ms. Wynn's amended crossclaim, Attorney Sinatra brought in Attorney Barry Langberg to review the allegations in the crossclaim for a possible defamation action against Ms. Wynn.<sup>482</sup> Attorney Langberg was an attorney at Brownstein Hyatt Farber Schreck, LLP at the time he conducted the analysis.<sup>483</sup> This is the same firm where Attorney Schreck, the attorney who handled the 2005 settlement agreement, was a named partner.

Attorney Layne stated that his understanding was that Attorney Langberg was brought in "to do a review and an investigation of each of the claims that were present in the complaint including specifically the 2005 settlement situation and to come back and deliver a written report that the board would be able to review and then determine next steps."<sup>484</sup>

Investigators have reviewed Attorney Langberg's memorandum to the board on the subject, and also interviewed him. Although the memorandum he prepared is not dated, it is

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When investigators asked Attorney Sinatra about Attorney Langberg's involvement in the matter with respect to the independent directors, she responded, "I know that he did [become involved], but I was sitting on the outside, so I don't know the circumstances."

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believed that the contents of the memorandum were presented to the independent directors at their April 20, 2016 meeting.<sup>485</sup> In a section of the memorandum captioned TRUTH OR FALSITY OF STATEMENTS, Attorney Langberg analyzed various statements in the fifth amended crossclaim. With respect to the assertions in the crossclaim pertaining to the 2005 settlement agreement, Attorney Langberg analyzed the following statement for a potential defamation action against Ms. Wynn:

*The Chairman and CEO had made a multimillion dollar payment and thereby expose[d] the Company and other directors to liability without their knowledge or consent.*<sup>[486]</sup>

With respect to this statement, Attorney Langberg's memorandum concluded:

*There is substantial evidence, factual and legal, that this allegation is false. In fact, Mr. Wynn did make a payment to settle false accusations in a personal civil matter but the Company and directors were not exposed to liability. On the contrary, Mr. Wynn's decision to settle the matter was apparently based on the best interest of the Company and not on the actual facts of the case. The settlement, involving his personal funds, fully protected the Company and directors. Of particular interest is the fact that Elaine Wynn knew about this matter since 2009 and never thought it was necessary to disclose the information to the board. Thus, as a Board member herself, she determined it unnecessary to pursue the matter with the full Board. [Emphasis in original from Attorney Langberg.]*

...

*The settlement agreement provided a complete general release of all claims against Mr. Wynn, the Company, and the directors of the Company. Thus, rather than "expose the Company and others to liability," Mr. Wynn ensured that there would be no liability.*

*From a legal perspective, the manner in which the matter was handled at no time exposed the Company or the directors to liability.*<sup>[487]</sup>

IEB investigators interviewed Attorney Langberg regarding what steps, if any, he took to investigate the truth or falsity of the allegations surrounding the 2005 settlement agreement. He indicated that he took the following steps: 1) interviewed Mr. Wynn and 2) interviewed Attorney

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<sup>485</sup> [REDACTED]

<sup>486</sup> Id.

<sup>487</sup> Id.

Schreck.<sup>488</sup> That was the extent of Attorney Langberg's inquiry.<sup>489</sup> Attorney Langberg stated to investigators that he was brought in to do a defamation analysis, not to conduct a sexual harassment investigation.<sup>490</sup>

Attorney Langberg told investigators that at the time he drafted the memorandum, he was not aware of any other incidents of alleged sexual misconduct by Mr. Wynn. He said, "I guarantee you, if I had any inkling that there were other incidents as later came out, they would have been in my report."<sup>491</sup> Attorney Langberg initially told investigators that he was never told that the 2005 settlement matter had started with an initial complaint of a sexual assault.<sup>492</sup> However, when asked about what the "false allegations" referenced in his memorandum would have been if he did not even know about the sexual assault allegation, he told investigators that, "Frank [Schreck] must've said something to me, that gave me the idea that there had been an allegation that it was not completely voluntary."<sup>493</sup> Attorney Langberg also said, "[T]he whole pattern of activity that came out . . . I wasn't aware of. And that shocks me that I wasn't aware of it."<sup>494</sup>

The independent directors considered the information initially presented to them during their March 14, 2016 conference call with Attorneys Sinatra, Tourek, and Layne, along with Attorney Langberg's defamation analysis, and ultimately concluded that no further action was required by the board related to the allegations in the crossclaim referencing the settlement agreement.<sup>495</sup> Those decisions are referenced in the independent directors' meeting minutes

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<sup>488</sup> [REDACTED]

<sup>489</sup> Id. [REDACTED]

<sup>490</sup> Id. [REDACTED]

<sup>491</sup> Id. [REDACTED]

<sup>492</sup> Id. [REDACTED]

<sup>493</sup> Id. [REDACTED]

<sup>494</sup> Id. [REDACTED] Attorney Langberg told investigators that he had a 20-year relationship with Mr. Wynn. He said, "I wouldn't say we were friends because I don't travel in the same social circles as he does, but when I would go to Wynn Resorts, when I would go be at the hotel for business or whatever, I'd often have dinner with him and his wife. He was at my wedding." Id. [REDACTED]

<sup>495</sup> Director Clark Randt was not considered an independent director because before being appointed to the board he had been employed by the Company. Thus, he did not participate in the meetings on April 20, 2016 and May 18, 2016. He told investigators that he did review the amended complaint saying, "there was a vague reference to the settlement, but it didn't jump out at me at the time because I had no prior knowledge or anything . . . It just went right by me." [REDACTED]

[REDACTED] He also told investigators that he "didn't learn of the multi-million dollar part until the *Wall Street Journal* article." Id. [REDACTED]

dated April 20, 2016 and May 18, 2016.<sup>496</sup> The minutes of the April 20, 2016 independent directors' meeting reflect the following:

*Mr. Layne further explained [that] Mr. Langberg had also been engaged by the Company to evaluate whether an investigation by the board or a board committee for the purpose of examining the allegations made by Ms. Wynn in the amended complaint would be protected by the attorney-client privilege. Mr. Layne explained that Mr. Langberg had concluded that the outcome of such investigation would likely not be privileged.*

*Mr. Layne suggested the board weigh the potential benefits of an investigation into the allegations contained in the amended complaint against the potential consequences. Mr. Layne further noted the independent directors should not consider Mr. Langberg's analysis of the allegations in Ms. Wynn's amended complaint as a substitute for an investigation the board determines it should initiate at its direction; rather, it should consider such an analysis as an initial examination of the allegations contained in the amended complaint which will help inform the board of what additional actions, if any, may be required. The independent directors also discussed and weighed the fact that Mr. Langberg's firm represents and has represented the Company and Mr. Wynn in unrelated matters.<sup>[497]</sup>*

Neither Attorney Layne nor the independent directors obtained any information on whether or not an investigation had been conducted in 2005 on the original allegation. Attorney Layne told investigators that "the sense was that this was sort of a very old and cold situation and it was [a] one-off and by one-off meaning that there had not been any other incidences."<sup>498</sup> Attorney Layne did not recall who told him it was a "one-off," but he thought it was part of the original conversations that he had with Attorney Sinatra and Attorney Tourek.<sup>499</sup> Attorney Layne told investigators that he never spoke to Mr. Wynn directly about the 2005 matter.<sup>500</sup>

When asked about his knowledge of the 2005 settlement agreement, Mr. Maddox acknowledged learning of the agreement after Ms. Wynn's amended crossclaim was filed.<sup>501</sup> He received information on the agreement from Attorney Sinatra, she told him that it was a

<sup>496</sup> [REDACTED] The minutes are labeled "Draft" and were never officially approved by the independent directors.

<sup>497</sup> Id. [REDACTED]

<sup>498</sup> [REDACTED]

<sup>499</sup> Id. [REDACTED]

<sup>500</sup> Id. [REDACTED]

<sup>501</sup> [REDACTED]

"consensual event," and he was aware that it involved an employee.<sup>502</sup> He told investigators that in hindsight he should have taken the matter more seriously, but he was focused on the impacts of the litigation on the Company.<sup>503</sup>

As previously mentioned, Director Mulroy, Director Shoemaker, Chairman Wayson, Director Randt, Attorney Sinatra, Mr. Maddox, and Attorney Layne all characterized the litigation involving Ms. Wynn as bitter, nasty, and highly acrimonious.

The fact that Ms. Wynn was the source (in her fifth amended crossclaim) of the allegations regarding the 2005 settlement agreement may have colored the judgment of board members and outside counsel for the board on the veracity of the assertions and whether action by the Board was warranted. Nonetheless, it is worth noting that any potential risk to the welfare of the Company's employees was not part of the board's analysis at the time.

#### 4. The Board Implements a Communications Protocol

According to Attorney Layne, with respect to the 2005 settlement agreement, the board was "quite frankly annoyed, beyond, I would say even beyond annoyed. They were upset that a matter like this could've occurred and they didn't know about it."<sup>504</sup> He went on to tell investigators that the board recognized that the casino licenses are the Company's most important assets and that one thing they "can't ever let happen is a non-flow of important information" to the board.<sup>505</sup> Attorney Layne said that the board suggested and then implemented an official "communications protocol" for information that needed to be brought to the board's attention.<sup>506</sup> He noted that such a protocol "is not common because it's implicit."<sup>507</sup> The communications protocol requires that executive management of the Company report certain matters to the Company's lead independent director within a reasonable period of time, including "[A]ny matter that is likely to jeopardize the reputation of the enterprise, including those relating to the Company or its subsidiaries, their respective directors and officers, or their material partners, suppliers, operators or contractors."<sup>508</sup>

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Id.

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Id.

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Id.

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Id.

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Id.

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Attorney Layne confirmed that Attorney Sinatra was involved in the drafting of the communications protocol.<sup>509</sup> During her interview, she confirmed that she was aware of it.<sup>510</sup> Mr. Maddox stated in his July 2, 2018 interview with IEB investigators that he was not aware of the recently adopted communications protocol.<sup>511</sup>

5. *The Company's Communication with the Nevada Gaming Control Board*

During this investigation, the Company provided the IEB with a document entitled, "EPW Counterclaim Timeline" regarding the events surrounding Ms. Wynn's amended crossclaim.<sup>512</sup> There is an entry on the timeline dated March 24, 2016 (four days prior to the public filing of the crossclaim), that reads, "Spoke to AG Burnett, NGCB Chairman, re the EPW Amended Answer, Counterclaim and Cross Claim." The timeline document lists the participants as Attorney Tourek and A.G. Burnett. Attorney Tourek was interviewed about this communication and could not recall whether he or the NGCB initiated the contact,<sup>513</sup> but the weight of the evidence obtained by the IEB indicates that the Company initiated the contact with the NGCB. There also is an entry dated March 28, 2016 that reads, "Sent A.G. Burnett, NGCB Chairman, a copy of the EPW Amended Answer, Counterclaim, and Cross Claim;" no participants are listed on the timeline document for this entry. The timeline also has an entry dated March 31, 2016 which reads, "Spoke with J. Abba (NGCB) regarding GCB questions related to the..." (remainder of the cell is blank; no participants are listed). The Company also provided documents that included a handwritten letter dated April 13, 2016 from Attorney Schreck to NGCB employee Jake Abba indicating answers to Mr. Abba's questions regarding the 2005 settlement agreement.<sup>514</sup> Attorney Schreck's handwritten letter to Mr. Abba makes no mention of a rape allegation. Attorney Schreck told investigators that he received a call from Mr. Abba saying that he had read about "Elaine's complaint" and requested details about it.<sup>515</sup> Attorney Schreck told investigators that as a result of that conversation, he sent the handwritten letter to Mr. Abba and then never heard from him again.<sup>516</sup> The IEB asked Attorney Schreck if

509 [REDACTED]  
510 [REDACTED]  
511 [REDACTED]  
512 [REDACTED]  
513 [REDACTED]  
514 [REDACTED]  
515 [REDACTED]  
516 Id. [REDACTED]

he told Mr. Abba that there had been a rape allegation, and Attorney Schreck responded, "I don't know if I did or not."<sup>517</sup> Attorney Schreck told investigators that he did not recall that part of the communication but told investigators that "I indicated that she had signed a release of whatever claims that she had made."<sup>518</sup> When the IEB asked Attorney Schreck if Mr. Abba inquired as to the claims that were made that required a release, Attorney Schreck said, "Not that I know. He just basically asked me to give him an outline of what had happened."<sup>519</sup> The NGCB, citing NRS 463.120, informed the IEB that the agency could not provide information to Massachusetts regarding its communication with the Company about the settlement agreement.

The IEB spoke with Mr. Burnett, the former Chairman of the Nevada Gaming Control Board who was in that position in March of 2016. Mr. Burnett indicated that at that time, he had in fact spoken with either Attorney Tourek or Attorney Schreck<sup>520</sup> about the 2005 settlement agreement and was told Mr. Wynn had a relationship with an employee that involved a pregnancy, that the parties split up amicably, and that there was a \$7.5M settlement. Mr. Burnett stated that he had investigators check into the matter, and they reported back, questioning whether a regulatory matter was involved, and at that point any NGCB involvement ended. Mr. Burnett told investigators that no one ever brought up rape and that he never had any information about sexual misconduct by Mr. Wynn prior to the *WSJ* article.

At no time did anyone from the Company contact the IEB, or anyone else at the MGC for that matter, to alert the Commission to the filing of the fifth amended crossclaim or the allegations therein.

**B. In October 2016, Former General Counsel for Wynn Resorts Kimmarie Sinatra and General Counsel for Wynn Las Vegas Stacie Michaels Receive a Letter Meant for Mr. Wynn Containing References to Sexual Harassment and Sexual Misconduct**

On October 27, 2016, only months after the board learned of the 2005 settlement and following the adoption of the new communications protocol, Cindy Mitchum, Mr. Wynn's

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<sup>517</sup> *Id.*

<sup>518</sup> *Id.*

<sup>519</sup> *Id.*

<sup>520</sup> Mr. Burnett could not recall which person he spoke with or who initiated the contact, but said he was 80% sure that he did not initiate the contact. Rather, he believed a representative from the Company reached out to him. The timeline indicates that the contact occurred before the fifth amended crossclaim was publicly filed.

executive assistant, received an email from "Gillian," with a five-page letter as an attachment.<sup>521</sup> There was no message in the email. The subject line of the email read "Letter for Cindy." Ms. Mitchum forwarded the email to Attorney Sinatra and Attorney Stacie Michaels (general counsel for Wynn Las Vegas at the time) at 1:06 P.M. with a message stating:

*Hi Kim and Stacie ...*

*I received this e-mail today. I did not open the attachment.*<sup>[522]</sup>

Attorney Sinatra responded to Ms. Mitchum at 4:36 P.M. that same day with a message stating: "I will handle[.]"<sup>523</sup>

Three days later, on October 30, 2016, at 7:36 P.M., Attorney Sinatra sent another email to Ms. Mitchum responding to the "Letter for Cindy" email saying, "I would like to see him tomorrow re this. What time works for him?"<sup>524</sup> Ms. Mitchum and Attorney Sinatra then exchanged emails resulting in the scheduling of a meeting with Mr. Wynn and Attorney Sinatra for the following day, October 31, 2016 at 11:30 A.M.<sup>525</sup>

The letter attached to the email was from a former employee, Gillian, who had been terminated after an internal investigation into an unauthorized "tip pooling scheme." The Company's legal department and corporate investigations department had been involved in the investigation of the tip pooling scheme and the subsequent termination of Gillian.<sup>526</sup> The first paragraph of the letter from Gillian to Mr. Wynn read: "I am sending this to have Cindy Mitchum to read to only Steve Wynn with no one else present. This letter is not intended to go further than him. I will ensure he is aware of this letter."<sup>527</sup> Included in the five page letter attached to the email was the following language, which appears on page 3 of the letter:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>521</sup> [REDACTED]

<sup>522</sup> Id.

<sup>523</sup> Id.

<sup>524</sup> [REDACTED]

<sup>525</sup> Id.

<sup>526</sup> The IEB was provided with the corporate investigative materials related to the termination.

<sup>527</sup> Mr. Wynn has limited eyesight and no longer has the ability to read documents himself.

<sup>528</sup> Mr. Wynn owned a yacht at that time.

[REDACTED]

IEB investigators interviewed Attorney Michaels (former general counsel for Wynn Las Vegas) on June 13, 2018. She told investigators that when she received the email, she read the first paragraph of the attached letter and then closed the document and thought to herself, "Why in the hell did she send me this?"<sup>529</sup> She said that she sat there for a few minutes and then called Attorney Sinatra. Attorney Michaels told investigators that she said to Attorney Sinatra, "Have you seen this weird email we got from Cindy that appears to be a personal letter for Mr. Wynn?[,]" and Attorney Sinatra responded that she would take care of it.<sup>530</sup> Attorney Michaels said that she "deleted the email and went on with [her] life" after Attorney Sinatra told her she was handling it.<sup>531</sup>

Attorney Sinatra was interviewed by IEB investigators on August 3, 2018. In that interview she told investigators the following:

*So when you read the first line of this, it says, "I am sending this to have Cindy Mitchum to read -- to only Steve Wynn with no one else present. This letter is not intended to go further than him. I will ensure he is aware of this letter." And I might have read a little further, because I have read the first couple of paragraphs now. And they basically are this whole thing about, I gave up my entire life to work for the Wynn, and it's not fair that you're not giving me severance. When I saw that first bit, I was like, I don't really feel good about reading this. I feel like it's an invasion of someone's privacy. It would be like if I went on his desk and stole his private correspondence. It's weird, because he can't read. Since Cindy didn't want to deal with it, what I did is I printed it out and I went down to his villa. And I said to him, [Gillian] sent you a letter." And, "Do you want me to read it to you?" I reminded him of the arc of what had happened, which is she got fired for cause in May. She got the lawyer. The lawyer may be working with Elaine, whatever. But here's this letter. And I told him about the first sentence that says, "Only Steve's supposed to know about this and nobody else." I asked him if he wanted me to read it to him. And he said no. So I told him that I was going leave it with him, because maybe he wanted Don Campbell to read it to*

<sup>529</sup> [REDACTED]

<sup>530</sup> Id. Attorney Michaels also told investigators that "it seemed bizarre to me that she [Cindy Mitchum] would forward [the letter from Gillian] and say she hadn't opened it but yet would choose Kim and I (sic) as the recipients of the letter." Id. [REDACTED]

<sup>531</sup> Id. [REDACTED]



*him, or maybe he wanted Andrea to read it to him. But if he didn't want me to read it to him, okay.*<sup>532]</sup>

When Attorney Sinatra was asked if the allegations in the letter were required to be reported to the board under the 2016 communications protocol, she responded, "I'm sure someone thinks it is."<sup>533</sup> And after reviewing the document, Attorney Sinatra indicated, "[I]f you did some investigation of it, and you thought it had any veracity at all, then I would think it would be reportable. Because it had to do with [Mr. Wynn]."<sup>534</sup>

Attorney Layne was asked if this is the type of matter that should have been reported to the board under the 2016 communications protocol and he responded, "No question."<sup>535</sup>

In sum, there is no indication that anything at all was done by the Company regarding the allegations of sexual harassment and sexual misconduct contained in the 2016 letter written by a terminated employee that was forwarded by Mr. Wynn's assistant to Attorney Sinatra and Attorney Michaels.

### **C. The Company Reports A Lawsuit Containing Serious Allegations Against Board Member Ray Irani to the NGCB, but not to the MGC**

During the course of the IEB's investigation, investigators obtained a large number of deposition transcripts and exhibits from the Okada litigation. During a review of Attorney Tourek's May 9, 2016 deposition testimony in the Okada litigation, investigators noted the following line of questioning, which involved allegations of serious misconduct on the part of Dr. Ray Irani, a member of the Company's board of directors and a qualifier for the Massachusetts license:

[Question]: *Are you aware of any instances in which the company has investigated any allegations of misconduct or wrongdoing by anyone who was at the time a member of the board of directors?*

[Tourek]: *Mr. Okada.*

[Question]: *Other than Mr. Okada, anyone else?*

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533 *Id.*

534 *Id.*

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[Tourek]: *I don't think so.*

[Question]: *Has it come to your attention recently that there are allegations that have been made in a lawsuit filed in Los Angeles against Dr. Irani that include, among other things, allegations that he was involved in the falsification of U.S. visas?*

[Tourek]: *I am aware of the lawsuit. I read it, yes.*

[Question]: *I should clarify, it's actually involved in the falsification of information provided for U.S. visas. In your view, are the allegations something that warrant investigation by the company?*

[Tourek]: *In my view, the allegations do warrant investigation by the company.<sup>[536]</sup>*

Investigators located an article in the *Los Angeles Times*, dated April 6, 2016 and entitled, "Workers at Bel-Air mansion claim they were trafficked to U.S. via Middle East." The article reported that three women from the Philippines filed a lawsuit against Dr. Irani and his wife, alleging that they had been underpaid and overworked by them, and that two of the women were trafficked into the United States via Qatar and effectively confined to the Iranis' Bel-Air home. The article detailed allegations in the complaint, including that the women were forced to work long hours performing various household duties for \$1,200 a month, that their passports were taken from them, and that the Iranis' security guards kept close watch on their movements amounting to imprisonment in the home.<sup>537</sup>

Investigators obtained and reviewed the complaint, which was filed in Los Angeles Superior Court on April 5, 2016. The 18-count complaint alleged: Human Trafficking, Hostile Work Environment Harassment – National Origin, Failure to Prevent Unlawful Harassment Due to National Origin, Hostile Work Environment Harassment – Race, Failure to Prevent Unlawful Harassment Due to Race, Hostile Work Environment Harassment – Ancestry, Failure to Prevent Unlawful Harassment Due to Ancestry, Intentional Infliction of Emotional Distress, Wrongful Conversion, False Imprisonment, Slander, Failure to Pay Overtime, Failure to Pay Minimum

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Wage, Failure to Provide Meal Periods, Failure to Provide Rest Periods, Failure to Keep and Furnish Accurate Wage Statements, Waiting Time Penalties, and Unfair Competition.<sup>538</sup>

The IEB investigation has confirmed that the Company was aware of the matter involving Dr. Irani at the time. The Company promptly notified the NGCB of the charges against Dr. Irani. In an email on April 15, 2016 from Attorney Tourek to an investigator with the NGCB, Attorney Tourek wrote: "Also, I wanted to pass the attached document on to you – it (sic) a complaint that was filed in California against one of our independent directors. We are monitoring the matter and have spoken to the director, who denies everything in the complaint. We have not initiated any investigation at this stage since the allegations do not involve any Wynn entities."<sup>539</sup> The IEB notes that even though the allegations did not involve any Wynn entities, suitability standards for qualifiers of the casino licensee demand an examination of the qualifier's behavior that extends beyond behavior directly related to Company activities. By law, suitability standards require an examination of "overall reputation," including integrity, honesty, and good character.<sup>540</sup> Although the Company notified gaming regulators in Nevada of the matter, no notification was made to the MGC.<sup>541</sup> Company executives subsequently told the IEB that the lack of notification to the MGC was an oversight and may have been a result of Encore Boston Harbor not being operational at that time.

The Company also notified its compliance committee of the lawsuit against Dr. Irani. A review of the minutes of the compliance committee meeting held on May 12, 2016, shows the following: "Mr. Tourek informed the Committee that he had spoken to Dr. Irani's attorney and that the Company would continue to monitor the litigation."<sup>542</sup> A four sentence memorandum from Attorney Tourek to the compliance committee dated July 21, 2016, states that Attorney Tourek "spoke with Mr. Irani and his attorney . . . regarding the charges and was advised that the charges were untrue."<sup>543</sup> This memorandum also states that the case had been dismissed with

<sup>538</sup> [REDACTED]

<sup>539</sup> [REDACTED]

<sup>540</sup> See G.L. c. 23K, § 12(a).

<sup>541</sup> With respect to notification to the MGC, board member Patricia Mulroy told investigators that the IEB's "expectation is no different from Nevada Gaming Control Board [] regulators' expectations. The burden is not on the regulator to investigate. The burden is on [the licensee] to disclose." [REDACTED]

<sup>542</sup> [REDACTED]

<sup>543</sup> Id.

prejudice and the matter had concluded.<sup>544</sup> A review of the agenda for the August 1, 2016 compliance committee meeting shows that the matter was placed on the meeting agenda; however the minutes from the August 1, 2016 meeting do not reflect any discussion on the matter.<sup>545</sup>

Investigators confirmed that a settlement in the case was quickly reached, and that the court minutes reflect the following entry made on August 15, 2016: "The Court orders the case dismissed. However, the Court shall retain jurisdiction to enforce the terms of the settlement pursuant to Code of Civil Procedure Section 664.6." The settlement terms have not been made public.

Investigators interviewed James Stern, the Company's senior vice president of corporate investigations and security, but he had no recollection of the matter involving Dr. Irani at all and indicated that he was not involved in any investigation involving allegations against Dr. Irani.<sup>546</sup>

Investigators made inquiries of Attorney Sinatra and Attorney Tourek. Attorney Tourek was not made aware of the terms of the settlement.<sup>547</sup> Attorney Sinatra stated that the Company "kept in touch with [Dr. Irani's] lawyers," and, "when they resolved it, I guess we accepted that resolution."<sup>548</sup> She further stated that the Company would have independently investigated the matter "[i]f it had to do with the Wynn."<sup>549</sup> Investigators asked Mr. Maddox about this matter. He was on the compliance committee at the time.<sup>550</sup> He stated that he had no recollection beyond reading about it in the *LA Times* and did not know the details of the allegations, what the settlement was, or whether or not he (Mr. Maddox) was on the compliance committee at the time it was reported to the committee by Attorney Tourek.<sup>551</sup>

Dr. Irani continued to serve as a director on the board and did not resign until March 5, 2018, approximately five weeks after the *WSJ* article was published regarding the allegations of workplace sexual misconduct against Mr. Wynn.

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<sup>544</sup> *Id.*

<sup>545</sup> *Id.*

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According to the minutes for the May 12, 2016 compliance committee meeting, Mr. Maddox was a member of the committee and was in attendance.

### **IEB's Findings from events in 2016**

- In 2016, the members of the Company's board of directors became aware of the crossclaim filed by Elaine Wynn in the Okada litigation, which involved a multi-million dollar settlement by Mr. Wynn. There also is evidence that the board members became aware that the conduct at issue in the crossclaim was of a sexual nature.
- Attorney Sinatra and Attorney Michaels were forwarded a letter addressed to Mr. Wynn from a terminated employee, with language about sexual harassment in the workplace, and claim to have read only the opening few lines.
- The Company and the compliance committee were aware of serious charges filed in court against a board member/qualifier for the Massachusetts license.

### **Significant Issues from events in 2016**

Below are the issues which the IEB suggests the Commission consider in evaluating the ongoing suitability of Wynn Resorts, Limited as an entity qualifier for the Massachusetts licensee:

- Failure to notify the MGC of the allegations in Ms. Wynn's fifth amended crossclaim, and the underlying facts and circumstances of the 2005 settlement agreement, despite providing information about the same matter to Nevada regulators.
- Failure to give the Nevada Gaming Control Board a full and complete disclosure of the facts and circumstances relating to the 2005 settlement agreement.
- The reliance, in significant part, by the board and certain executive staff on a defamation analysis (rather than an investigation) to conclude that no additional action was warranted.
- No adequate follow up on the independent directors' request for information on the existence of additional complaints.
- Failure to address admitted sexual contact by the CEO with a subordinate employee, despite the admitted contact being years old.
- Failure to notify the MGC about allegations contained in a lawsuit filed against director Ray Irani, a qualifier for the Massachusetts license, that were reported to the NGCB.

- Failure by the Company's general counsel and the general counsel of Wynn Las Vegas to appropriately handle a document alleging sexual harassment. Even if the factfinder believes the accounts of both Attorney Sinatra and Attorney Michaels that they each read only the first part of the letter, their absence of any sense of responsibility to safeguard the interests of the Company is troubling, given their roles as general counsel of Wynn Resorts and general counsel for Wynn Las Vegas. Even Mr. Wynn's assistant saw fit to forward the letter to the top attorneys for the Company and the property. Regardless of any hesitation they may have had about potentially private correspondence to Mr. Wynn, they knew that the letter originated from a terminated employee who was the subject of a prior investigation by the Company.

## **XI. EVENTS IN 2017**

### **A. Details about Allegations Against Mr. Wynn Come to Light During the Discovery Process in the Okada Litigation**

As set forth above, Ms. Wynn's fifth amended crossclaim in the Okada litigation was filed in court on March 28, 2016.<sup>552</sup> Given the assertions in the crossclaim about the 2005 settlement, extensive discovery followed. As part of the discovery process, deposition testimony was obtained in mid to late 2017 from multiple witnesses. From July to November of 2017, Mr. Wynn, Ms. Whennen, Mr. Schorr, and Attorney Schreck all gave sworn testimony in their depositions confirming that the 2005 matter had originated with a rape allegation against Mr. Wynn, a piece of information that at the time of the depositions had not yet been communicated to the members of the Company's board of directors. Also relevant was Mr. Nathan's October 3, 2017 deposition testimony where he appears to describe events related to the 2006 settlement agreement. Ms. Whennen's deposition testimony was particularly significant because her testimony revealed that she had memorialized Amy's initial complaint and rape allegation in notes, including Amy's statement that she had become pregnant by Mr. Wynn. Ms. Whennen's notes also documented Amy's meeting with Mr. Schorr, and his assurance to Amy that the matter

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552 [REDACTED]

would be investigated. Attorney Sinatra was present for the deposition of Ms. Whennen<sup>553</sup> and the October 5 deposition of Mr. Wynn<sup>554</sup>; other counsel for the Company were present for the other depositions.

During the course of the IEB's investigation, the IEB requested interviews with all of the directors who were serving on the Company's board in 2017. The IEB interviewed board members Patricia Mulroy, Jay Johnson, Boone Wayson, Alvin Shoemaker, and Clark Randt.<sup>555</sup> John Hagenbuch met with investigators early in the investigation pursuant to his role as a member of the special committee, but later declined to come to Massachusetts for a formal interview after he decided not to seek re-election to the board. With the exception of Mr. Wayson, each of those board members told IEB investigators that they were not apprised in 2017 of the developments that arose from the discovery process connected to the fifth amended crossclaim, and consequently they remained unaware throughout the 2017 year of the initial underlying rape allegation connected to the 2005 settlement.<sup>556</sup> Mr. Wayson testified in his October 4, 2017 deposition in the Okada litigation that he became aware of a past settlement "somewhere in the past year," including that the settlement amount was paid out of Mr. Wynn's personal funds.<sup>557</sup> He also testified in that deposition that he assumed that the matter was handled appropriately at the time, including an assumption that corporate counsel at the time had determined the truth of the allegation underlying the settlement agreement.<sup>558</sup>

The Company did not notify the MGC of the existence of the 2005 settlement agreement, the underlying allegations, the assertions in the amended crossclaim, or the information that was being uncovered during the Okada litigation's discovery process.

The Protective Order in the Okada litigation, dated February 14, 2013, placed certain restrictions on the disclosure and use of information and documents produced in that case.<sup>559</sup> For

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555 The IEB also requested that the following former board members come to Massachusetts to be interviewed, but they declined: Robert Miller, James Virtue, and Ray Irani.

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558 Id.

559 After the publication of the *WSJ* article on January 26, 2018, the parties in the Okada litigation signed a Stipulation, endorsed by the court on February 8, 2018, permitting the Company to

example, and generally speaking, information designated "Confidential" could only be shared with a party or employees of a party who were deemed "necessary" to assist counsel in that case, and information designated "Highly Confidential – Attorneys' Eyes Only" could only be shared with a party's attorneys, but not the party itself.<sup>560</sup> Moreover, the Protective Order provided that Confidential Information or Highly Confidential Information could be "used solely for the purposes of th[at] action."<sup>561</sup>

The Protective Order also addressed confidentiality with respect to deposition transcripts.<sup>562</sup> Specifically, under Section 10, deposition transcripts were automatically treated as "Highly Confidential – Attorneys' Eyes Only" for 30 days following receipt of the transcript. The parties' respective counsel then had 30 days to review and designate portions of the deposition transcript "Confidential" or "Highly Confidential," if applicable.<sup>563</sup> And then portions of a deposition transcript that were designated "Confidential" or "Highly Confidential" would remain so designated unless changed by agreement of the parties or order of the court.<sup>564</sup>

The Protective Order did not explicitly provide for a process whereby a party could obtain permission from the court to produce material to a board member or to a regulator. However, counsel for the Company told the IEB that a process of filing a motion for such permission was not precluded. The Company confirmed that no one at the Company attempted to use such a process in 2017 so that the material could be disclosed to regulators or the board.

As to supplying information in the "Highly Confidential" category to the board of directors, counsel for the Company informed the IEB as follows:

*Seeking permission to share Highly Confidential information with a non-attorney (i.e., a Board member) is a little more difficult. To begin, Section 8 requires that Highly Confidential and Confidential information be "used solely for purposes of this action." For example, the Company's outside counsel, Kirkland & Ellis, was not even allowed to see Highly Confidential information because they were not retained in the Okada litigation. If Wynn Resorts wanted to share something that was Highly Confidential with someone not otherwise entitled to see it, like Kirkland & Ellis or members of the Board, the Court indicated that she would*

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provide materials otherwise afforded protection under the Protective Order to gaming regulators in Massachusetts and Macau. [REDACTED]

<sup>560</sup> [REDACTED]

<sup>561</sup> Id. [REDACTED]

<sup>562</sup> Id. [REDACTED]

<sup>563</sup> Id. [REDACTED]

<sup>564</sup> Id. [REDACTED]



*downgrade that information to Confidential, meaning that all parties to the litigation would have been permitted to see the information. My recollection is that there was a desire not to disclose prior deposition testimony to the Board members given the pending litigation, and the fact that many of the Board members were still going to be deposed in the litigation.*

The IEB has found no evidence in the course of this investigation to show that anyone at the Company who was aware of the information uncovered during the Okada litigation discovery process in 2017, including members of the legal department, took any affirmative steps to investigate the 2005 matter involving Amy, or to discuss the 2005 matter with Mr. Wynn further. Nor did the Company make any attempt to obtain the court's permission to disclose the information to the board or to regulators.

**B. Ultimately, the Company Resists Mr. Wynn's Requests to Change its Zero Tolerance Policy on Sexual Harassment**

During his deposition in the Okada litigation on October 25, 2017, Mr. Wynn made comments about the Company's "Zero Tolerance" policy on sexual harassment while it was being read to him in the process of the deposition. The following exchange took place:

[Mr. Wynn]: *Was this [Zero Tolerance policy] dated? When was this ridiculous document, this overreaching -- if I knew about this before today, it wouldn't exist in its present form for five minutes.*

[Question]: *All right. Mr. Wynn, I will inform you that the company issue date of the original was 11-9 of '4; effective date, 11-9 of '04. There was a revision date of 11-20-08, 05-20-09, 08-27 of '10, and 12-3 of '10.*

[Mr. Wynn]: *I wonder if it was logical at any moment. When did all of these open-ended things that would allow anybody to say anything about anybody staring at someone? Asking a -- accessing a website that might contain something? What happens if a person didn't know it contained it? Anybody could accuse anything -- anybody of anything based upon the crap you're reading.*

[Question]: *Mr. --*

[Mr. Wynn]: *I don't know what lawyer did this, but I'm glad to hear it, to tell you the truth. Please finish, because there will be another revision.*<sup>[565]</sup>

After reading the policy to Mr. Wynn, the parties took a break and went off the record for 14 minutes. After coming back on the record, the following exchange took place:

[Question]: *Mr. Wynn, I take it from your comments during the reading of this policy that you were not familiar with it.*

[Mr. Wynn]: *Not the detail. No, I was not.*

[Question]: *Did you know that existed in some form?*

[Mr. Wynn]: *I've known we've had a Code of Conduct from the very time we became a public company, but I heard things in this reading that were counterintuitive to what I would consider to be good management of the company.*

[Question]: *Do you know if this policy is distributed throughout the company for employees to have?*

[Mr. Wynn]: *I don't know for sure, but I -- I would suspect that if it's a Code of Conduct, that it's distributed. I doubt if anybody could have read the detail of that very legalese -- and that's exactly what I mean, Mr. Cole. Any policy that isn't simple enough and logical enough and straightforward enough to be understood by my most important employees, my line employees, many of whom are a little deficient in English or haven't had higher education -- any policy like that is a failed policy. What is important is that you get the basic ideas to people so they can live and trust them. What I heard today was a tour de force of legalese, small print. It reminded me very much of the eight pages they hand you when you're in the pre-operation room and ask you to sign it that's supposed to relieve the liability of all the doctors. You're laying there with an IV in your arm and they hand you eight pages of foolishness in small print that you couldn't read if you had a magnifying glass. Those kinds of things protect no one. And in this company, at least, we have a very strong policy of communicating with employees in a sound, simple way that they can understand, trust and rely upon. That document was far too complicated, had way too many open-ended, silly things that would have encouraged litigation, discouraged any legitimate management. You are obliged to report on pain --*

*on pain of punishment and even termination if you don't report that someone stared at someone? How preposterous. Or that a manager could be suspected of criticizing someone because supposedly that person didn't go on a date or that person stared at them. Not only is the manager now exposed to some kind of unstructured accusation; but on top of it, anybody who thinks that someone stared at someone is obliged to report it; and even if there's no substantiation for any of it, there could be follow-up activity that could lead to termination and disciplinary action. No, what I heard -- and I confess that I had never read the whole thing, and I mistakenly assumed that if we had a Code of Conduct, it was one that my employees could understand and live with, but not that document. There have been revisions. There will be more revisions, I assure you, to try and get it to a point where it meets the standard of this company. I'm going to bring it up to the board at our meeting in November, straightaway, because what I heard is counterintuitive to good management and violates our most fundamental principles of good communication with our employees. The fundamental idea that we don't allow harassment or discrimination based upon sexual preference, skin color, religion, that goes without saying. That's common sense and that's good management. But that document, which took 15 or 20 minutes to read, sounded like boilerplate from some lawyer. How it got through and hasn't been revised, I confess to you, Mr. Cole, it surprises me. But I'll attend to it with the board straightaway, and I'm going to have to let the board hear this in its entirety and reveal to the board its fundamental weaknesses in so many areas that don't protect employees but, on the other hand, contribute to confusion, false accusations and mass confusion. Yeah, not a good -- not a good document. And so we're not perfect. We try and get better. We'll work on it, see if we can improve that.*

[Question]: *Mr. Wynn, did you talk with your lawyers about anything during the break, including this topic you just covered?*

[Mr. Wynn]: *Yes.*

[Question]: *What did you talk about?*

[Mr. Wynn]: *They told me not to volunteer. They said, [Y]ou're not allowed to do it in a courtroom and you can't do it in a deposition, even though the judge isn't here, and don't be volunteering. Respond only to questions that you ask me.*

[Question]: *That was the extent of the conversation?*

[Mr. Wynn]: *Yes.*

[Question]: *Nothing more?*

[Mr. Wynn]: *Well, I did repeat what I just said to you when I walked in the room, my exasperation at some of the things that I heard, and my embarrassment, I might add, that we haven't fixed and done a better job. We can do a better job.*

[Question]: *Who does this sexual harassment policy apply to?*

[Mr. Wynn]: *Everybody.*

[Question]: *Including you?*

[Mr. Wynn]: *Including me.*<sup>[566]</sup>

Stacie Michaels, the general counsel of Wynn Las Vegas, told IEB investigators:

[Michaels]: *In October of 2017, Mr. Wynn had his deposition taken in the Okada case at some point in the month and was asked a question about the sexual harassment policy. And his lawyers asked to have the sexual harassment policy read into the record so that he could understand what he was being questioned on. And my understanding of how that deposition went was he was surprised by what the sexual harassment policy said, just from what's been reported to me. I've never seen his deposition. So Kim called me up and rips into me about how stupid the sexual harassment policy was. It's hard to understand. It's too long. It needed to be rewritten and I was like, "Kim, the policy's totally legit. It's what the law requires. It matches the EEOC checklist of what a policy needs to have. We've used it in litigation numerous times and it's stood up and done its job and defended the company.*

[Question]: *Was, was there ever a, a meeting about the sexual harassment policy and Steve Wynn and potentially Kim Sinatra wanting changes to the policy? Was there a meeting about that?*

[Michaels]: *There were a few meetings.*

[Question]: *Were any of those meetings at Steve Wynn's villa?*

[Michaels]: *All of the ones that I was a party to were in his villa. Some were with Kim and some were without.*

[Question]: *Okay. And did Steve Wynn want to change the policy with respect to being able to have relationships or date, whatever, with, employees?*

[Michaels]: *Yes.*

[Question]: *And how did, how did he express that?*

[Michaels]: *He said, 'This policy is stupid. You can't prohibit consenting adults from having relationships.'*

[Question]: *And why was that in your opinion, [be]cause you said the policy was good the way it was. Why was his recommendation not appropriate under the law?*

[Michaels]: *Well, there's obviously s-, a supervisor and non-, you know, and the person that reports to them can never have a relationship, that's totally inappropriate. There were other things with the policy. I think his phrase was, "You've deputized every supervisor in my building to be a nar[c] about what they see," because there's the witnessing obligation that if you witness ...*

[Question]: *You have to tell.*

[Michaels]: *...you have to report. And he was like, "That's the dumbest thing I've ever heard." And he Bryan [Cohen] and I initially spent 45 minutes to an hour with Steve, trying to explain to him the law ...and why the policy was the law requires and he said, "That's stupid. We should fight it."*

[Question]: *And what approach did Kim Sinatra take to this policy change?*

[Michaels]: *Initially, she sided with Mr. Wynn.*

[Question]: *Okay. Anything else on that you think we should know?*

[Michaels]: *Eventually, we educated Kim on the law and she came around to understanding why the policy was written the way it was and she ultimately, was with us when we went in to talk to Mr. Wynn about why he can't just gut the policy the way he wants to.*

[Question]: *When was that conversation?*

[Michaels]: *Early November because the meeting Bryan Cohen and I had with him was on Halloween Day.*

[Question]: *Okay. And how did that go over with Steve Wynn?*

[Michaels]: *Um, not well. We've had a quite circula[r] conversation with him. Um, we had brought Gregg Kamer with us, outside counsel, because we ne-, we knew we needed backup to explain to him the seriousness of trying to change the policy. He trusted Gregg's opinion and we knew that Gregg wouldn't back down to Steve and would, would put it all out there which he did during that meeting to his credit.*

[Question]: *Okay.*

[Michaels]: *And so ultimately, there was a redraft of the policy that had sort of streamlined the examples and, the ultimate debate was whether or not to remove the witnessing obligation. So that ...*

[Question]: *And that would be the obligation if you knew something, you had to report it?*

[Michaels]: *Correct. And we ...*

[Question]: *And Steve did not want people to be required to do that?*

[Michaels]: *No.*

[Question]: *And you knew that. Kim Sinatra knew that. Did Matt Maddox know that?*

[Michaels]: *He wasn't in those meetings so I don't know if he knew. I had no conversation [with] him.*

[Question]: *[Did] Craig Billings know that?*

[Michaels]: *N-, he wasn't there. I wouldn't ...*

[Question]: *What about Kevin Tourek? Was he involved?*

[Michaels]: *No, he wasn't tha- ...*

[Question]: *(inaudible) ... employed*

[Michaels]: *Yeah, he was gone and he wasn't back yet then. . . . And then we never did change the policy, just so you know.<sup>[567]</sup>*

Attorney Sinatra told investigators that she agreed with Mr. Wynn that the Company should review the policy and look to see if they could make it more understandable.<sup>568</sup> She did indicate that she explained to Mr. Wynn why it was "totally inappropriate to allow supervisors to date people they supervised."<sup>569</sup> When Mr. Wynn persisted in not liking that policy, Attorney Sinatra said, "So I called Maurice Wooden, and I said, 'Come down here and explain to the boss why you need to have this.' And he gave him real life examples as to why it doesn't work. And [Attorney] Gregg Kamer was there. And Gregg and Maurice and I were very firm in saying, we're not taking it out. It's always been part of our policy, and we're going to keep it."<sup>570</sup>

**IEB's Findings from events in 2017**

- By 2017, members of the Company's legal department at both the corporate and property levels became aware of the details behind the 2005 settlement agreement for \$7.5 million, including the initial allegations that Mr. Wynn had raped Amy, a manicurist at the Company, that she had become pregnant by him, and that Mr. Schorr had assured Amy that there would be an investigation, as well as other allegations as previously described. Yet, the legal department took no steps to petition the court to allow for disclosure to the board, even though the board had adopted the communications protocol months earlier, requiring the Company to notify the board of any matter that is likely to jeopardize the reputation of the Company.
- The Company's legal department took no steps to investigate the 2005 allegations in light of the information regarding the matter disclosed during the discovery process in the Okada litigation.
- The Company's legal department took no steps to disclose the information regarding these allegations to regulators.
- The Company did reject Mr. Wynn's stated desire to change the Company's policies regarding consensual sexual relations amongst employees.

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Id.

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Id.

## **XII. EVENTS IN 2018**

### **A. In the Weeks Leading Up to the Publication of the *WSJ* Article, Michael Weaver, Chief Marketing Officer for the Company, Advises Employees Not to Respond to Reporters, and Executives Do Not Launch an Inquiry of Their Own**

IEB investigators interviewed Michael Weaver, chief marketing officer for the Company.<sup>571,572</sup> Mr. Weaver also handles communications matters for Wynn Resorts, Limited. Mr. Weaver told investigators that in the weeks leading up to the publication of the *WSJ* article on January 26, 2018, he fielded questions from Company employees who were indicating that they had been approached by reporters from the *WSJ* and asking what they should do.<sup>573</sup> Mr. Weaver told investigators that he knew from employees that reporters were asking employees questions about what it is like to work at the Company, whether Mr. Wynn ever propositioned them, and whether Mr. Wynn ever touched them.<sup>574</sup> Mr. Weaver told investigators that in response to those inquiries from employees, "we were saying, 'don't respond.' I mean, our . . . my advice is always, 'don't, don't respond. Don't answer your phone and don't answer the questions.'"<sup>575</sup>

On January 23, 2018, *WSJ* reporters contacted the Company seeking comment on a number of issues related to alleged sexual misconduct by Mr. Wynn that they were planning to include in their upcoming article. The next day, January 24, 2018, the Company provided the *WSJ* with a statement from the Company and a statement from Mr. Wynn. Email correspondence indicates that Mr. Weaver, Attorney Sinatra, and Attorney Langberg all actively participated in the drafting of the statements to the *WSJ*.<sup>576</sup>

The statements appear below.<sup>577</sup>

<sup>571</sup> [REDACTED]  
<sup>572</sup> Mr. Weaver is now the chief communications officer for the Company.  
<sup>573</sup> [REDACTED]  
<sup>574</sup> Id.  
<sup>575</sup> Id. [REDACTED]  
<sup>576</sup> [REDACTED]  
<sup>577</sup> [REDACTED]



Statement from the Company to the WSJ:

*The recent allegations about Mr. Wynn reflect allegations made in court hearings by Mr. Wynn's ex-wife, Elaine Wynn, in her legal battle with him and the company. It is clear that Mr. Wynn's ex-wife has sought to use a negative public relations campaign to achieve what she has been unable to do in the courtroom: tarnish the reputation of Mr. Wynn in an attempt to pressure a revised divorce settlement from him.*

*It is noteworthy that although Ms. Wynn says she knew about the 2005 allegations involving Mr. Wynn in 2009, she never made them known to the board of directors, of which she was then a member, and she did not raise them until after Mr. Wynn remarried and the shareholders of Wynn Resorts voted not to elect her to the board.*

*Wynn Resorts is committed to operating with the highest ethical standards and maintaining a safe and respectful culture that has made Wynn Resorts the employer of choice for 23,000 employees worldwide. The Company requires all employees to receive annual anti-harassment training and offers an independent hotline that any employee can use anonymously, without fear of retaliation. Since the inception of the company, not one complaint was made to that hotline regarding Mr. Wynn*

Statement from Mr. Wynn to the WSJ:

*The idea that I ever assaulted any woman is preposterous. We find ourselves in a world where people can make allegations, regardless of the truth, and a person is left with the choice of weathering insulting publicity or engaging in multi-year lawsuits. It is deplorable for anyone to find themselves in this situation.*

*The instigation of these accusations is the continued work of my ex-wife Elaine Wynn, with whom I am involved in a terrible and nasty lawsuit in which she is seeking a revised divorce settlement. Elaine has explicitly threatened to slander and destroy me and I am surprised that the media is allowing itself to be used to advance this agenda. The conduct of Elaine during the course of the pending lawsuits has been shocking and deeply disturbing to me personally and as the CEO of Wynn Resorts. Despite such conduct, I have repeatedly refused to capitulate to her demands. In response, I remain focused on Wynn Resorts, our employees and our shareholders and will not be distracted from those efforts.*

During this time period, the Company did not notify the Commission that it was aware that the *WSJ* was making inquiries about Mr. Wynn and sexual misbehavior or preparing to publish a story on that topic. Nor, based on the IEB's investigation, did the Company make any

internal inquiries or launch any sort of investigation on its own regarding the conduct of Mr. Wynn, the Company's Chairman and CEO.

**B. The Company Focuses on Getting the *WSJ* Article "Killed," and Does Not Notify Regulators that it Might Run**

In an interview on October 15, 2018, IEB investigators asked Jacqui Krum, general counsel of Encore Boston Harbor, about the *WSJ* article. She told investigators that a few days before the article was published, she learned in the course of a conference call with Company executives that the *WSJ* was working on an article and that it concerned allegations against Mr. Wynn.<sup>578</sup> Attorney Krum stated that, "At the time, we were told that this was Elaine Wynn's doing and that it was just part of the ongoing legal battle between the two of them. During the call, there was no discussion of what these allegations were, however there was discussion on how to coordinate this when and if the article came out."<sup>579</sup> Attorney Krum said that she knew that Attorney Langberg had been engaged and was sending the *Wall Street Journal* letters telling them they had defamatory information, and that the Company was trying to get the article "killed."<sup>580</sup> She also stated that there was some discussion on that call about what to do when and if the article did come out.<sup>581</sup> Attorney Krum said that it was decided that she would, on Attorney Sinatra's prompt, call the Massachusetts Gaming Commission, and that either Attorney Michaels or Attorney Sinatra would call the Nevada Gaming Control Board.<sup>582</sup>

Attorney Krum went on to state that about 20 to 30 minutes before the article came out, Mr. Weaver, chief marketing officer for the Company, sent a confirmation email that the article was going to be published.<sup>583</sup> Attorney Krum stated that she texted Attorney Sinatra immediately upon receiving the email from Mr. Weaver and asked her whether she was authorized to call the MGC at that point.<sup>584</sup> Attorney Sinatra responded via text, "No."<sup>585</sup> Attorney Krum told investigators that she was under the impression that the Company

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578 [REDACTED]  
579 Id. [REDACTED]  
580 Id. [REDACTED]  
581 Id. [REDACTED]  
582 Id. [REDACTED]  
583 Id. [REDACTED]  
584 Id. [REDACTED]  
585 [REDACTED]

was making a last ditch effort to try to get the article killed.<sup>586</sup> The article came out at 12:55 P.M. Eastern Standard Time on January 26, 2018. After Attorney Krum read it, she received a text message from Attorney Sinatra that stated, "Call me."<sup>587</sup> When she did, Attorney Sinatra told her that she could notify the MGC.<sup>588</sup>

Investigators sent a written inquiry to Attorney Sinatra about the text messages between her and Attorney Krum. She responded in writing that her best recollection of the text messages is as follows:

*The company received notice on or about January 26, 2018 that the article about Wynn Resorts and Mr. Wynn would likely be published that day. The company had a plan in place to notify all relevant constituencies, including the MGC, when the article was published; Ms. Krum was the person designated to contact the MGC. In the text messages, Ms. Krum is asking Ms. Sinatra whether she should call the MGC at that time (11:08 a.m. EST), which was before the article was available online. Ms. Sinatra wanted Ms. Krum to wait so she could send the article to the MGC at the same time she provided the MGC with notice. As soon as the article was available online, Ms. Sinatra directed Ms. Krum to notify the MGC and provide them with a copy.*

Thus, the Company did not notify the MGC until after the *WSJ* article had already been published.

### **C. The Company Releases a Statement to Employees the Same Day the *WSJ* Article is Published**

On January 26, 2018, the *WSJ* published its article referencing not only the underlying allegations in the 2005 settlement agreement but also reporting, "[b]eyond this incident, dozens of people *The Wall Street Journal* interviewed who have worked at Mr. Wynn's casinos told of behavior that cumulatively would amount to a decades-long pattern of sexual misconduct by Mr. Steve Wynn. Some described him pressuring employees to perform sex acts."<sup>589</sup>

That same day, the Company released the following message to the Wynn employees in Las Vegas:<sup>590</sup>

586 [REDACTED].  
587 *Id.* [REDACTED]  
588 [REDACTED]  
589 [REDACTED]  
590 [REDACTED]

*To all Employees,*

*You may have heard news reports today about allegations of sexual harassment directed at Mr. Wynn. Those news stories are part of the latest litigation strategy led by Elaine Wynn, who has been involved in lawsuits against Mr. Wynn and our company since 2011.*

*We are all supportive of Mr. Wynn and his leadership, and while it is unfortunate that the news media has been used to assail Mr. Wynn and us in this way, we are doing everything we can to protect our employees from these types of attacks and publicity.*

*We remain steadfast in maintaining the safe and respectful culture that has made us the employer of choice for our 23,000 fellow employees worldwide.*

*Maurice Wooden*

IEB investigators asked Mr. Weaver, Mr. Maddox, Mr. Wooden, and Attorney Sinatra about the decision to reflexively put out the above message of support for Mr. Wynn before any type of investigation was even initiated and without giving recognition to employees who may have suffered from such alleged misconduct. Mr. Weaver stated to investigators that, "if I were to do it over again, I would do it differently."<sup>591</sup> Mr. Weaver also stated that his "big regret in that letter was the reference to Steve."<sup>592</sup> Mr. Maddox told IEB investigators in reference to the message to employees, "we debated who should sign it. Because as ridiculous as it looks now, we believed it. We believed it. And I know it looks stupid and tone deaf. I get it."<sup>593</sup> Mr. Wooden denied to investigators that he wrote the statement himself, saying that it came from "Michael Weaver and that team."<sup>594</sup> Mr. Wooden also told investigators that Mr. Wynn himself had input into the statement.<sup>595</sup> Mr. Wooden said that he did not want his name on the statement, but that it was decided by Mr. Wynn that it would be best if it went out under Mr. Wooden's name.<sup>596</sup> Mr. Wooden admitted to assenting to the use of his electronic signature for the message to employees, but he described feeling unable to refuse.<sup>597</sup> Attorney Sinatra told IEB

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592 Id.

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595 Id.

596 Id.

597 Id.

investigators that she did not remember if she had approved the dissemination of the message from Mr. Wooden to employees.<sup>598</sup> The Company's legal department responded to an IEB inquiry regarding the drafting of the message to employees as follows: "Michael Weaver was the primary drafter, with input from Kim Sinatra and Barry Langberg."

The same day that the *WSJ* article was published, the Company's board of directors formed a special committee, comprised of three members, to investigate the types of allegations against Mr. Wynn detailed in the *WSJ* article. Those three board members were Patricia Mulroy, Jay Johnson, and John Hagenbuch.<sup>599</sup> The special committee's investigation is discussed in more detail in Sections XII.G & H of this report.

#### **D. Mr. Wynn Continues to Live on Company Property and Tries to Rally Support for Himself from Employees**

In the days and weeks after the *WSJ* article was published on January 26, 2018, Mr. Wynn continued to live in his "villa" on Company property. Despite the allegations that had been publicized against him regarding spa and salon employees, he was allowed to meet with employees, including with spa and salon employees, in what were described as "town hall" style meetings, where he tried to rally support for himself.<sup>600</sup> During one of those meetings, he reportedly invited, in a group setting, any employee who had been sexually harassed and/or assaulted by him to raise a hand.<sup>601</sup> On March 6, 2018, *The Nevada Independent* published an article reporting that, according to a new lawsuit, Mr. Wynn visited the salon after allegations of sexual misconduct were published in the *WSJ*, and that he "asked employees to raise their hands

<sup>598</sup> [REDACTED]

<sup>599</sup> Mr. Hagenbuch did not seek re-election to his directorship position and left the board on May 16, 2018.

<sup>600</sup> [REDACTED]

<sup>601</sup> The exact language Mr. Wynn used is not precisely known, however Attorney Michaels was present for one of Mr. Wynn's "town hall" meetings. [REDACTED] When investigators asked her if, in one of those meetings, she heard Mr. Wynn say, "Hey, anybody that's been sexually assaulted by me, raise your hand," she responded, "to that effect, yes." *Id.* When interviewed in June of 2018, Attorney Michaels told investigators that, knowing what she knows now, looking back, she is embarrassed for the Company. *Id.* [REDACTED] Later in the investigation, the IEB received a copy of a certified transcript made from a recording of at least a portion of Mr. Wynn's town hall meeting with salon employees on January 31, 2018, but the "raise your hand" statement is not included in that transcript. It is unclear whether the meeting recorded was the same meeting as that covered in *The Nevada Independent's* report.

if he had assaulted or abused them and demanded they record videotaped statements saying he didn't commit such acts."<sup>602</sup> Two messages to all spa staff from "Spa Leadership" invited spa staff to meetings with Mr. Wynn on January 31, 2018 and February 1, 2018.<sup>603</sup> According to the invitations, these meetings were "optional but highly encouraged," and "holds [were] placed on most therapists who are present during the time period" allowing them to attend.<sup>604</sup> Therapists had to ask "a member of the leadership" team to remove the hold from their schedule.<sup>605</sup> No one from the Company appears to have tried to stop him from proceeding in that manner, or counseled him afterwards that such actions on his part were inappropriate in the circumstances and could be construed as attempts to intimidate potential victims or witnesses into silence.

Further, in the weeks after the initial *WSJ* article was published on January 26, 2018, the Company made no efforts to stop Mr. Wynn from continuing to utilize the spa and salon services on Company property.<sup>606</sup> Attorney Michaels told investigators that when she heard he was still using the spa and salon services, she marched into Mr. Wooden's office and said, "This has to stop," to which he responded, "I didn't know he was doing it either."<sup>607</sup> As a result, Mr. Wooden told investigators that he informed Mr. Wynn that he could no longer use the spa and salon services.<sup>608</sup> Mr. Wooden then memorialized that directive in an email dated March 6, 2018.<sup>609</sup>

On April 10, 2018, outside counsel for the Company confirmed in a letter to Mr. Wynn that due to new allegations made against him, his "occupancy of the property [his residence at Wynn Las Vegas] has ended, effective immediately."<sup>610</sup> On April 11, 2018, counsel for Mr. Wynn responded in writing, calling the April 10<sup>th</sup> eviction letter "outrageous on its face" but agreeing to vacate the property by April 16, 2018 and directing the Company to place a litigation hold on various materials.<sup>611</sup> The following day, on April 12, 2018, outside counsel for the Company responded in writing, stating that it was the Company's understanding that Mr. Wynn

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[REDACTED]

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[REDACTED]

604 Id.

605 Id.

606 Mr. Wynn's residence at the time was a "villa" on the Company's property.

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[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

had already vacated the property and reiterating that he cannot return, and that if he had not already left he must do so "at once."<sup>612</sup>

**E. Allegations are Made by a Former Employee of Sexual Misconduct by Mr. Wynn and an Offer of a Bribe/"Hush Money" by Mr. Wynn and Mr. Maddox**

**1. Background and Allegation by Heather**

During the course of this investigation, IEB investigators met with "Heather," a former employee who worked for the Company until 2009. Heather met with IEB investigators on two occasions during which she provided details of her history with the Company, allegations of sexual misconduct by Mr. Wynn, as well as a recent allegation that Mr. Wynn and Mr. Maddox contacted her in January 2018 and offered her what she believed to be a bribe in the form of a job offer and money in exchange for her not speaking with reporters from the *WSJ*.

Heather told investigators that she had worked at [REDACTED] before moving over to Wynn Resorts in 2004, and that it was during her [REDACTED] employment that she alleges that Mr. Wynn repeatedly propositioned and sexually harassed her and allegedly routinely assaulted her by grabbing her breast. She indicated that he allegedly touched her in this manner approximately "24 to 48 times," and that she "was never not touched or violated when [she] was with him." Heather stated that she reported this behavior by Mr. Wynn towards her to her supervisors at [REDACTED]. Heather identified the two supervisors, who later worked for the Company, and they were subsequently interviewed by IEB investigators. Both of them stated that Heather had not reported this alleged misbehavior by Mr. Wynn to them. One of the former supervisors interviewed did state that after the *WSJ* article, Heather contacted him and informed him that she was contemplating telling the *WSJ* what happened to her. The former supervisor stated that he did not ask for details, nor did Heather provide any.

Heather also told investigators that in 2006, Mr. Wynn propositioned her and when she refused, he grabbed her arms hard enough to leave marks, shoved her forcefully against a wall, called her a "stupid little girl," and left. Heather stated that she reported this incident to five Company managers and executives, including the two aforementioned supervisors. According to Heather, each of the five individuals told her that he/she would handle it but none of them ever followed up with her on the matter. All five of those individuals identified by Heather were

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<sup>612</sup> [REDACTED]

interviewed by investigators. All of them stated that they never received any complaints from Heather regarding Mr. Wynn.

Heather told investigators that on December 14, 2017, she received a call from a reporter from the *WSJ*, who asked her about "[Mr.] Wynn and his inappropriate behavior." Heather said that she contacted Elaine Wynn about the call from the reporter, and that Ms. Wynn was supportive and advised her to do what she felt was best.<sup>613</sup> Heather indicated that she was reluctant to speak with the reporter but she did provide investigators with copies of text messages between herself and the reporter during this time period, indicating that Heather and the reporter would be in touch after the holidays.

Heather stated that the day after the reporter's initial contact, she called Mr. Maddox at his office, informed him about the reporter's call, and asked him what she should do. She told investigators that she called Mr. Maddox because she has known him for a long time, respects him, and that he was helpful to her during her time with the Company. She also said that she was friendly with Mr. Maddox's wife, would see him on occasion "at hockey games and stuff," and has spoken to him occasionally since she left the Company in 2009. According to Heather, Mr. Maddox responded about the reporter by asking why Heather would want to get involved in the Wynns' nasty divorce. Investigators asked Heather whether she had ever spoken to Mr. Maddox about Mr. Wynn's alleged inappropriate sexual misconduct, and she answered that she had not spoken to him about it. Investigators asked whether to her knowledge Mr. Maddox was aware of alleged inappropriate behavior by Mr. Wynn. Heather answered that she had no knowledge that Mr. Maddox was aware.

Heather went on to state that Mr. Maddox called her on her home telephone in January of 2018. She stated that Mr. Maddox asked her whether she had spoken to the *WSJ* reporter, and that she said she had not because she needed to protect her family. According to Heather, Mr. Maddox replied that if there was anything she could remember or if she needed help with anything, to contact Attorney Sinatra or him. She also said that Mr. Maddox asked her to put the details of her contact with the *WSJ* reporter in an email directed to him. Heather then provided investigators with a copy of an email she stated that she sent to Mr. Maddox at his work email

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<sup>613</sup> Heather acknowledged that she has a close and personal relationship with Elaine Wynn.



address on January 16, 2018.<sup>614</sup> This email will be discussed in further detail in this Section of the report. Heather also provided investigators with copies of a series of text messages she stated were between herself and Mr. Maddox dated January 26, January 28, and January 29, 2018.<sup>615</sup> These text messages are also discussed in further detail in this Section of the report.

Heather stated that about one week after the call from Mr. Maddox, she received a call again on her home number, from the operator at the Company who asked if she would take a call from Mr. Wynn.<sup>616</sup> Heather said that she took the call and spoke to Mr. Wynn. She said that he thanked her for not speaking with the *WSJ* reporter and that he would like her to come back to work for him. Heather stated that she told him that returning to the Company was never going to happen and that Mr. Wynn then hung up on her. Heather said that about 20 to 30 minutes later, Mr. Maddox called her, again on her home phone, and that he said that he had a great job for her. She told investigators that she responded, "Did hell freeze over because I just told Mr. Wynn, 'No.'" She said that Mr. Maddox then offered her \$100,000, and she further explained that she believed the \$100,000 was not attached to any job offer because she had refused the offer and also because no details of any job were even discussed. She said that she told Mr. Maddox that she did not want his "dirty money" and did not want "hush money." She also said that Mr. Maddox did not respond and that the call was terminated after she asked, "Are we done?"

## 2. Email Review

Pursuant to a document request by investigators, the Company provided several emails relative to this aspect of the investigation. One of those emails provided by the Company was the aforementioned email, dated January 16, 2018 at 11:31 P.M., from Heather to Mr. Maddox detailing her contact with the *WSJ* reporter. The copy provided by the Company had been forwarded by Mr. Maddox to Attorney Sinatra.<sup>617</sup> Investigators, utilizing the expertise of the Commanding Officer of the Massachusetts State Police Cyber Crime Unit, obtained directly from the Company's servers in Las Vegas the original version of the email which was sent from

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<sup>614</sup> [REDACTED]

<sup>615</sup> [REDACTED]

<sup>616</sup> During her first interview, Heather indicated that the calls from Mr. Wynn and Mr. Maddox occurred prior to the publication of the *WSJ* article. During her second interview with investigators, Heather indicated that she believed that this call occurred after the *WSJ* article.

<sup>617</sup> [REDACTED]



The differing versions of the emails provided to investigators by Heather and also obtained from the Company servers was the subject of further inquiry by investigators which is detailed in this Section of the report.

### 3. Text Messages Review

As previously indicated, Heather provided printouts of text messages between her and Mr. Maddox, identified in her phone as "MM" or "Matt."<sup>619</sup> Heather was unable to show investigators the actual text messages on her phone, as she indicated that she no longer had them available. Investigators also interviewed Mr. Maddox, and he indicated that he still had the text messages between the two of them. He accessed them on his cell phone and allowed investigators to review the text messages and obtain screen shots of them.<sup>620</sup> The majority of the text messages provided by Mr. Maddox were also provided in hard copy form by Heather, but not all of them. The first series of text messages on Mr. Maddox's phone attributed to Heather, but not provided by Heather, was dated January 16, 2018 at 8:43 P.M. It reads as follows:

[Heather]:

[REDACTED]

[Maddox]:

[REDACTED]

[Heather]:

[REDACTED]

[Heather]:

[REDACTED]

[Heather]:

[REDACTED]

Additional text messages, the first of which was dated January 17, 2018 at 5:21 P.M., were available on Mr. Maddox's phone but had not been provided by Heather:

[Heather]:

[REDACTED]

[Maddox]:

[REDACTED]

[Heather]:

[REDACTED]

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619 [REDACTED]

620 [REDACTED]

621 [REDACTED]

[Heather]: [REDACTED]

The next series of text messages from Heather to Mr. Maddox did not occur until January 26, 2018, the day the initial *WSJ* article is published. Again, these text messages were not provided by Heather to investigators. Referring to the *WSJ* reporter, Heather wrote:

[Heather]: [REDACTED]

[Heather]: [REDACTED]

[Heather]: [REDACTED]

Mr. Maddox responded approximately 12 hours later at 9:08 P.M. This is also the first text message provided by Heather to investigators:

[Maddox]: [REDACTED]

[Heather]: [REDACTED]

The remaining series of text messages provided to investigators by Heather and Mr. Maddox matched. On Sunday January 28, 2018, at 2:22 P.M., the following text messages were exchanged:

[Maddox]: [REDACTED]

[Heather]: [REDACTED]

[Maddox]: [REDACTED]

[Heather]: [REDACTED]

[Heather]: [REDACTED]

[Heather]: [REDACTED]

[Heather]: [REDACTED]

[Heather]: [REDACTED]

[Heather]: [REDACTED]

[Heather]: [REDACTED]

[Maddox]: [REDACTED]

[Maddox]: [REDACTED]

[Heather]: [REDACTED]

On Monday January 29, 2018 at 1:11 P.M., Mr. Maddox texted Heather:

[Maddox]: *As you have seen a special committee has been established with our board and if you feel the need to talk to investigators or this committee please reach out to Kim*

*Matt*

At 3:55 P.M., the following text message exchange occurred:

[Heather]: [REDACTED]

[Maddox]: *[Heather] we shouldn't text anymore if your lawyer wants to contact the company on your behalf please have that person reach out to Kim*

*Thanks*

[Heather]: [REDACTED]

According to both Heather and Mr. Maddox, no further communication between the two has happened since that text exchange.<sup>622</sup>

#### 4. Sworn Interview of Mr. Maddox

On July 2, 2018, IEB investigators interviewed Mr. Maddox under oath. He was asked by investigators if he was aware of any allegations against Mr. Wynn and he replied, "I had a random email from someone named [Heather], who when this *Wall Street Journal* [article] was about to come out, sort of implied something had happened to her. That was in January of

2018."<sup>623</sup> Mr. Maddox went on to detail Heather's work history and how she had contacted him and told him about her being harassed by the *WSJ* reporter.<sup>624</sup> Mr. Maddox stated that he immediately thought that this contact by Heather was "odd" as she had reached out to him after not talking to him for seven years and he initially thought it had to do with Elaine Wynn as he had in his head at the time that "this is all in my set-up scenario."<sup>625</sup> He stated that he asked Heather to send him the information in an email and in that email she indicated something to the effect of, "And I don't even want to bring up what happened to me."<sup>626</sup> He stated that he thought that this is the "Elaine trap Matt thing" but that it also "could be serious."<sup>627</sup> He stated that he had not had any contact with Heather in the previous seven years and that she called him at his office seeking advice and that he told her that he could not tell her what to do but that if it were him, he probably would not get involved in Steve and Elaine's divorce and be in the media.<sup>628</sup> Mr. Maddox indicated that he instructed her to send him an email because he wanted to understand what she was saying because she was "sort of all over the board" and that she could come talk to him and Attorney Sinatra.<sup>629</sup> He also told investigators that he informed her about the special committee.<sup>630</sup> Mr. Maddox stated that he never actually met with Heather and that they have had no contact since texting about the special committee.<sup>631</sup> When questioned at length about any offers of money or a job to Heather, Mr. Maddox replied that he never had a conversation with her about work and further stated that he would never offer Heather a job or money, nor was he aware of Mr. Wynn doing so.<sup>632</sup> Mr. Maddox stated that he believed he spoke with Mr. Wynn about receiving the email from Heather, but that Mr. Wynn did not recognize the name.<sup>633</sup> Mr. Maddox further indicated that he had no knowledge of any contact between Mr. Wynn and Heather.<sup>634</sup> When asked if he had offered anyone a job or money as

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<sup>623</sup> [REDACTED]  
<sup>624</sup> Id. [REDACTED]  
<sup>625</sup> Id. [REDACTED]  
<sup>626</sup> Id. [REDACTED]  
<sup>627</sup> Id. [REDACTED]  
<sup>628</sup> Id. [REDACTED]  
<sup>629</sup> Id. [REDACTED]  
<sup>630</sup> Id. [REDACTED]  
<sup>631</sup> Id. [REDACTED]  
<sup>632</sup> Id. [REDACTED]  
<sup>633</sup> Id. [REDACTED]  
<sup>634</sup> Id. [REDACTED]

"damage control," he denied it, replying, "I am not the type of person that would have offered a job or money for damage control."<sup>635</sup>

##### 5. Second Interview with Heather

Investigators met with Heather and her attorney for a second interview during which she reiterated her contentions that both Mr. Wynn and Mr. Maddox separately called her at her home from a Wynn Resorts telephone number and offered her a job and money which she described as a bribe or hush money for not speaking with *WSJ* reporters about Mr. Wynn. She insisted that she did not edit the email that she forwarded to her attorney, which was then provided to the IEB, by removing one line at the end of the email. Investigators, including the Commanding Officer of the State Police Cyber Crime Unit, spent time with Heather and her attorney attempting to locate the sent email (to Mr. Maddox) in Heather's email system, but investigators confirmed that the email was not accessible in her account. During this interview, investigators asked Heather if she ever specifically asked Mr. Maddox for a job and she replied, "No, I said I would like to...if I were to come back I would like to be an executive secretary but I would never go back into my old role." She also indicated that she was "looking for a job in general but that she did not want to go back to work *there* [the Company]."

Investigators also asked Heather about the text messages from her to Mr. Maddox, dated January 26, 2018, and provided to IEB investigators by Mr. Maddox, where Heather wrote that the reporter who was harassing her had spent the night in jail after violating a restraining order taken out by Heather. According to the text, that incident would have occurred on January 23, 2018. Heather acknowledged sending the texts to Mr. Maddox, identified the reporter, and detailed to investigators that the reporter had shown up at her residence attempting to speak with her and as a result she contacted the Las Vegas Metro Police Department and was told by the responding officer that the reporter was escorted off property and may spend the night in jail. In an effort to corroborate as much information as possible pertaining to these allegations, investigators contacted the Las Vegas Metro Police Department and requested any records of an incident as described by Heather. The department responded that it had no record of any incident at that location, nor a call for service involving Heather or the reporter. Investigators also identified and contacted the reporter in question. The reporter provided a statement to the

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<sup>635</sup> Id. [REDACTED]

IEB indicating not having been in Nevada on or about January 23, 2018, not having had any interaction with law enforcement officers around that time, never having been arrested or detained by law enforcement, and never having been subject to a restraining order.

Investigators confirmed that the Company's internal telephone system is capable of identifying incoming and outgoing phone calls to or from outside telephone numbers. Investigators checked records of the Company's telephone system for the relevant timeframe. The records provided by the Company do not show any calls to the Company's internal telephone system from Heather's home telephone number, nor do the records show any calls from the Company's internal telephone system to Heather's home telephone number. The absence of any record of calls from a Company number to or from Heather's home telephone number is inconsistent with Heather's statement to investigators that Mr. Wynn and Mr. Maddox each placed a call to her home telephone number with an offer of what she described as a bribe or hush money. A number of records were identified indicating calls to or from Heather's cellular phone to or from Company property, which is consistent with statements by both Heather and Mr. Maddox about their communications.

#### 6. Conclusion Regarding Allegation by Heather

In conclusion, while Heather's assertions involving sexual misconduct by Mr. Wynn are consistent in nature with other identified allegations, her specific claim of an offer of a bribe or hush money by Mr. Wynn and Mr. Maddox in exchange for her not speaking with the *WSJ* reporter was undermined by certain evidence obtained by IEB investigators.

#### **F. Mr. Wynn Steps Down as CEO and Chairman of the Board**

In the aftermath of the January 26, 2018 *WSJ* article, significant public attention was focused on the sexual misconduct allegations. On January 27, 2018, Mr. Wynn resigned from his position as the Republican National Committee finance chairman.<sup>636</sup> On February 1, 2018, the Chairman of the Board of Trustees at the University of Pennsylvania and the President of the University jointly released a message to the Penn community. The message announced that the University was rescinding the honorary degree it had bestowed in 2006 on Mr. Wynn, an alumnus of the University. The message also announced that the University would remove the

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<sup>636</sup> [REDACTED]



name "Wynn Commons" from the common area of one of the University's buildings (it had been so named following a reported \$7.5 million donation from Mr. Wynn in 1995), and would also remove Mr. Wynn's name from a scholarship fund that he had established by donation. The message stated, among other things, that "[t]he nature, severity and extent of these allegations, and the patterns of abusive behavior they describe, involve acts and conduct that are inimical to the core values of our University."<sup>637</sup>

On February 6, 2018, Mr. Wynn resigned as Chairman of the board and CEO of the Company.<sup>638</sup> He received no severance payment or other compensation from the Company. On the date Mr. Wynn resigned, the Company released the following statement:

*The Board of Directors of Wynn Resorts reluctantly announced today that it accepted the resignation of Steve Wynn as CEO and Chairman of the Board of Directors. The board has appointed Matt Maddox, currently the President of the Company, as its CEO, and Boone Wayson as Non-Executive Chairman of the Board of Directors, effective immediately.*

*"It is with a collective heavy heart, that the board of directors of Wynn Resorts today accepted the resignation of our founder, CEO and friend Steve Wynn," said non-executive chairman of the Board Boone Wayson. "Steve Wynn is an industry giant. He is a philanthropist and a beloved leader and visionary. He played a pivotal role in transforming Las Vegas into the entertainment destination it is today. He also assembled a world-class team of executives that will continue to meet the high standards of excellence that Steve Wynn created and the Wynn brand has come to represent."<sup>639</sup>*

Absent from this statement is any reference to the sexual misconduct allegations, the employees who may have potentially been victimized or targeted, or the ongoing investigation which had by that time already been started by the special committee. The current CEO, Mr. Maddox, and members of the board who were interviewed by the IEB as part of this investigation, confirmed that the decision to step down was Mr. Wynn's and the board had not taken any action to force him out at the time of his resignation. However, Mr. Wayson told IEB

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<sup>637</sup> [REDACTED] Later, on February 22, 2018, the University of Iowa removed Mr. Wynn's name from its Institute for Vision Research, which had been named for Mr. Wynn following a \$25 million donation commitment he made, marking the first time in that University's history that a donor's name was stripped from a building.

<sup>638</sup> Mr. Wynn also began efforts to divest his financial interest in the Company. His complete divestiture was announced on April 3, 2018.

<sup>639</sup> [REDACTED]

investigators when asked if the board took any action compelling his resignation, "We were, I think, heading down that road."<sup>640</sup>

In addition to Mr. Wayson, IEB investigators interviewed three other directors who were serving on the board in January of 2018 and asked them about the Company's statement reproduced above.<sup>641</sup> During director Johnson's interview, he told investigators that he had objected to the words "reluctantly" and "heavy hearts," but the statement went out as written anyway.<sup>642</sup> Director Randt told investigators that he had never seen the statement before it went out,<sup>643</sup> and Director Shoemaker told investigators that "nobody ever asked my opinion."<sup>644</sup> When investigators began to reference the statement to Director Mulroy, she stated, in obvious distress over the message, "Oh, please don't show me the Boone Wayson statement."<sup>645</sup>

Mr. Maddox told IEB investigators that Mr. Wayson was instrumental in orchestrating Mr. Wynn's departure from the Company. Mr. Maddox said, "[Mr. Wynn] is a very powerful man and very strong, and he wouldn't have listened to anybody about what he gets and doesn't get, giving up his \$330 million in severance, not getting this, not getting that. Give me this back. His whole life was wrapped up in this place. And to go through bit by bit by bit by bit and chop him out, only [Mr. Wayson] could have done that. So he was very good at doing that and very tough."<sup>646</sup>

#### **G. The Special Committee Commences an Internal Investigation**

On February 2, 2018, Attorney Sinatra informed the IEB that the special committee had hired the law firm of O'Melveny and Meyers, LLP to conduct an internal investigation into the matters raised by the January 26, 2018 *WSJ* article. Ten days later, on February 12, 2018, the Company announced that the internal investigation would now be conducted by the law firm of Gibson, Dunn & Crutcher, LLP.<sup>647</sup>

<sup>640</sup> [REDACTED]

<sup>641</sup> The IEB also sought interviews with Robert Miller, James Virtue, John Hagenbuch, and Ray Irani, who also were serving on the board in January of 2018 but subsequently resigned or did not seek re-election in the aftermath of the *WSJ* article, but they all declined.

<sup>642</sup> [REDACTED]

<sup>643</sup> [REDACTED]

<sup>644</sup> [REDACTED]

<sup>645</sup> [REDACTED]

<sup>646</sup> [REDACTED]

<sup>647</sup> [REDACTED]

Special committee members Mulroy and Hagenbuch visited the IEB offices on April 10, 2018, and investigators asked them about replacing O'Melveny and Meyers with Gibson Dunn as the firm conducting the internal investigation.<sup>648</sup> Ms. Mulroy told investigators that after Mr. Wynn resigned, "Steve is no longer CEO, he is no longer a member of the Board, and so investigating him at this point is – doesn't matter. What does matter is finding out who knew what when and looking at the overall policies, procedures, protocols, culture of the organization. When that changed the four corners of our contract with O'Melveny were gone.... [W]hen we looked at what do we need going forward, this is an issue of optics more than it is an issue of substance. Gibson Dunn has a renowned national employment practice. Their employment firm, their employment part of their firm, and the expertise they bring to the table is without question. It is considered one of the best in the country. It has high integrity. And to me that was - given the breadth of knowledge that they have, that was the better way to go. Quite honestly, we knew more about their expertise, their strengths, what they could bring to the table."<sup>649</sup>

Mr. Maddox told IEB investigators that at the initial stages of the relationship with O'Melveny, he was displeased that the firm had issued a press release before being officially engaged.<sup>650</sup> He also expressed deep concern about what he understood to be a large fee charged by O'Melveny for work it performed in another matter for an unrelated company.<sup>651</sup>

On April 3, 2018, Mr. Maddox, acting as the Company's CEO, sent a memorandum to all employees which included the language, "We are now clearly on our way to being a very different company. I am committed to providing a safe and respectful workplace for our 25,000

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<sup>648</sup> The IEB expressed concern to Ms. Mulroy and Mr. Hagenbuch about the selection of Gibson Dunn to conduct the internal investigation, as Gibson Dunn had been advising the independent directors for years and therefore had an established business relationship with the Company. Also, Attorney Sinatra had previously been a partner at Gibson Dunn and her actions as general counsel for the Company were now an aspect of the internal investigation. Using a firm with an established relationship could potentially impact employee, public, and shareholder confidence in the independence of the investigation and could also potentially impact the willingness of witnesses to share derogatory information with the special committee investigators. In addition, Gibson Dunn partner Attorney Jonathan Layne had advised the independent directors during the contentious period leading up to Elaine Wynn's non-re-election to the board. Given that Ms. Wynn is a critical witness in this matter, the prior relationship could be perceived as giving rise to a potential for bias and impartiality on the part of Gibson Dunn.

<sup>649</sup>

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<sup>651</sup> Id.

dedicated employees."<sup>652</sup> Mr. Maddox went on in the memorandum to identify an email address that the special committee set up for employees to submit any relevant information pertaining to the allegations against Mr. Wynn.<sup>653</sup>

During the course of the special committee's investigation, the special committee investigators attempted to interview Mr. Wynn and also sent a list of questions for him to answer. Mr. Wynn did not agree to an interview or to answer the questions posed. Instead, he provided the following statement, which his counsel later provided to the IEB:<sup>654,655</sup>

*I had multiple consensual relationships during my tenure at Wynn Resorts and made no attempt to document them. I do not believe that the specific details of any of these relationships are material to the issues I understand are being reviewed by the Special Committee. I recognize some of the names contained in the list of questions, but have no memory of ever meeting, or having any relationship with many of the women identified in your questions. I deny, however, ever having any relationship that was not consensual.*

*During the time that I was employed by Wynn, I was aware the Company had a code of conduct and related policies. I was not, however, familiar with the details of those policies. I was questioned about the policies during my deposition in the Wynn/Okada litigation, and would refer you to that testimony for a more fulsome explanation on this subject*

*As a general rule, I did not discuss my personal relationships with any other officer or director of Wynn. However, there were a few instances where an individual with whom I had consensual relations made allegations against me and the Company. In those instances, I recall talking with certain individuals about these issues to ensure that the Company's interests were adequately protected.*

*For example, in the late spring or early summer of 2005, I recall Company employees Doreen Whennen or Artie Nathan advising me of allegations being made against me by an employee named [Amy] who was then a manicurist at the Company. In addition to speaking with my counsel, Frank Schreck, I recall that I told John Moran and possibly Linda Chen (both of whom were . . . Company directors [at the time]) about the [Amy] matter.<sup>[656]</sup> I have addressed the [Amy] matter at length in my deposition given in the Wynn/Okada litigation, and would refer you to that testimony for a more fulsome explanation on this*

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653 Id.

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subject[.]

*I understand you have also asked a number of questions about a settlement I entered into with a former company employee named [Beth]. The [Beth] matter was the subject of a specific deposition session in the Wynn/Okada litigation, and I would refer you to that testimony for a more fulsome explanation on this subject.*

*Other than the specific instances addressed herein, I have no information regarding whether other officers or directors of Wynn were ever made aware of any specific allegation directed at me or the Company as a result of any relationship I may have had during my tenure at Wynn Resorts.*

Although his statement referenced what he described as "multiple consensual relationships," the statement failed to address allegations of sexual harassment or recognize the inherent concerns around imbalance of power when the CEO and Chairman of a large, publicly traded company has sexual relations with subordinate employees.

## **H. The Special Committee's Investigatory Findings and Recommendations<sup>657</sup>**

The special committee and its investigative team briefed the Company's board of directors on two nonconsecutive days (July 18, 2018 and August 3, 2018), regarding its final investigatory findings and also made a number of recommendations to the board regarding policy and training, human resources operations, and conflict of interest and internal controls. Those recommendations were accepted in their entirety by the board. Additionally, the special committee made certain personnel recommendations. Initially, the board accepted all but one of those recommendations.<sup>658</sup> Ultimately, all of the special committee's recommendations were adopted.

### **1. Summary of Findings of the Special Committee**

The report of the special committee noted a number of findings from its investigation in the area of Human Resources Leadership. Those findings are summarized below:

- "Many employees have lost faith in the ER [Employee Relations] process, and the immediate rebuilding of trust in ER and Company management is critical." On this point, the special committee noted that many employees, especially those in the salon and

<sup>657</sup> Information in this Section of the IEB report is derived from [REDACTED]

<sup>658</sup> Initially, the board decided not to adopt the special committee's recommendations to terminate Maurice Wooden, president of Wynn Las Vegas. [REDACTED] Mr. Wooden ultimately stepped down in December of 2018.

spa, have expressed a lack of faith and trust in ER as a result of actions by the Company and its leadership which seemingly sided with Mr. Wynn over the employees he allegedly harassed. The special committee relied upon, among other things, the following to support this finding: the voluntary employee "town hall" meetings that were held in the days after the *WSJ* article was first published (and are discussed in Section XII.D of this report), and the Company's February 6, 2018 press release wherein Mr. Wayson stated that the board had accepted Mr. Wynn's resignation "with a collective heavy heart."

- "Troy Mitchum's lack of HR experience, long-time loyalty to the Wynn, and familial relationships with other Wynn employees likely created a perception of bias." The special committee noted that "it appears that Mr. Mitchum, who has served as the head of the HR organization at the Wynn since 2016, has several indicia of potential personal bias or conflicts of interest. While the [s]pecial [c]ommittee investigation team identified no evidence indicating that Mr. Mitchum in fact acted on any such biases, the *perception* of such bias may be enough to dissuade employees who have been subject to harassment from coming forward with complaints. This perceived bias stems from (1) Mr. Mitchum's lack of HR experience, (2) his long-time employment (and loyalty) to the [Company], and (3) the fact that many of his family members have worked for the [Company], including his mother, who was Mr. Wynn's personal assistant for decades."<sup>659</sup>
- "While Company management has generally responded quickly and appropriately when confronted with complaints of sexual harassment, senior members of management, including Mr. Wooden, have failed to report complaints of harassment to ER."

The report of the special committee noted a number of findings from its investigation in the area of Harassment Policies and Training. Those findings are summarized below:

- "The [Company's] policies have generally been strong, with some room for improvement."
- "Until recently, the [Company's] training materials were insufficient to train employees how to identify, prevent, and report harassment."
- "The Company did not train Steve Wynn and should focus on ensuring all executives are properly trained on sexual harassment."

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<sup>659</sup> The IEB had similar concerns to those of the special committee in this regard. Given the nature and gravity of the HR issue that is the subject of this investigation, the lack of HR experience and training of the vice president of human resources at the time is troubling. The IEB's concern was exemplified by Mr. Mitchum's lack of understanding identified during an IEB interview as to why alleged victims of misconduct by the CEO and Chairman would hesitate to report their complaints to the employee relations department. Mr. Mitchum also failed to see any potential issue with having the head of HR be a familial relation to the CEO and Chairman's longtime personal assistant. The Company has recently hired Rose Huddleston as senior vice president of human resources for North America, a newly created position. Ms. Huddleston previously served as the regional director of human resources for Marriott International Corp.

The report of the special committee noted a number of findings from its investigation in the area of ER Investigatory and Disciplinary Practices. Those findings are summarized below:<sup>660</sup>

- "The ER Department has, in large part, been appropriately investigating and addressing sexual harassment complaints."
- "At times, the policy against relationships between supervisors and subordinates appears to have been improperly enforced against subordinates."
- "In some investigations, ER representatives likely engaged in conduct that could be perceived as inappropriate 'victim-blaming.'"
- "At times, ER appears to have inappropriately discounted complaints." With respect to this finding, the special committee report noted that, "it is certainly possible that a victim fearing retaliation may in fact wait until her separation from the Company – when retaliation is no longer a possibility – to raise complaints of harassment."
- "It appears that ER investigators may have been under the misimpression that 'he said/she said' cases cannot be resolved in favor of the complainant."

2. Summary of Steps Taken on the Company's Initiative, as Noted by the Special Committee

The report of the special committee noted that the Company took a number of steps on its own initiative in the weeks and months after the *WSJ* article, as summarized below:

- The Company fully separated from Mr. Wynn, resolved its litigation with Elaine Wynn (which brought to a close the Okada litigation that had been ongoing since 2012), and re-branded its Massachusetts project as Encore Boston Harbor.
- The Company recognized the need for additional independent directors and on April 18, 2018 announced the nomination of three additional independent members for the board of directors (Betsy Atkins, Dee Dee Myers, and Wendy Webb). On August 6, 2018, the board announced the addition of Phil Satre as its newly appointed vice-chairman.
- The Company made a number of personnel changes, including the resignation of Attorney Sinatra as general counsel for Wynn Resorts and the hiring of Ellen Whittemore for this position (effective July 16, 2018).
- The Company created the new position of executive vice president of human resources,<sup>661</sup> which reports directly to the CEO.

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<sup>660</sup> [REDACTED]

<sup>661</sup> This position was later changed to senior vice president of human resources.

- The Company adopted a number of corporate initiatives and policy changes including the adoption of a new board and management communications policy and the creation of a culture and community department. The Company also adopted revisions to its sexual harassment policy, its personal relationships policy, and its code of conduct, and began revisions to its procedures for conducting an HR investigations policy. The Company further retained an outside trainer to create new sexual harassment trainings, which started to be delivered to employees in June of 2018.
- The Company also adopted interim recommendations that were made by the special committee on May 5, 2018, including policies prohibiting Company executives, board members, and their families from receiving massage or other spa services, and requiring that all employees participate in in-person annual compliance sessions.

### 3. Summary of Recommendations Made by the Special Committee

The report of the special committee noted that it made a number of policy and operational recommendations. Overall, the special committee encouraged the board and the Company to continue to (i) lead by example – set a good "tone at the top"; (ii) foster a culture of cooperation and respect, not of fear; (iii) empower the legal, HR, internal audit, compliance and security departments to take necessary actions and make appropriate reports; (iv) encourage employees to come forward with complaints, concerns, and suggestions and hold supervisors accountable for mandatory reporting; and (v) continue to promote diversity and inclusion.

The special committee also made a number of specific recommendations regarding policy, procedure, and process. The Company has implemented or is in the process of implementing all of these recommendations, which are summarized below.<sup>662</sup>

- Remove references to Steve Wynn from all policies, handbooks, and onboarding materials.
- Expand the Company's harassment policy to define retaliation, explain that retaliation complaints must be reported and will be investigated, and explain that an employee who engages in retaliation may be subject to discipline up to and including termination.
- Expand the policy against personal relationships, including for increased scrutiny of employment of persons in family and personal relationships in key internal control positions.
- Clearly prohibit harassment by third parties (e.g., guests and vendors).

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<sup>662</sup> [REDACTED]



- Ensure that independent contractors know how to report harassment.
- Consider limits on employee patronization of Company properties.
- Require the reporting of sexual assault to the authorities.
- Clearly define roles and responsibilities of each group that receives reports of alleged harassment.
- Consider department-specific and new models of training within specific departments.
- Train the members of the board of directors on harassment, discrimination, and retaliation on an annual basis.

The special committee further made a number of recommendations in the area of human resources and employee relations.<sup>663</sup> The Company has adopted all of these recommendations, as follows:

- "Replace Troy Mitchum with a qualified and experienced HR leader."
- "Expand Human Resources hours to allow for a presence at night on the properties."
- "Ensure that when opening a new property, Human Resources staff is on-site from the beginning, or, at a minimum, that clear guidance is provided to employees regarding reporting incidents to Human Resources."
- "For the immediate future, and while the ER Department regains the trust of its workforce, implement a policy whereby sexual harassment complaints will be escalated to the General Counsel and in-house Labor & Employment Counsel, with the General Counsel then being responsible for consulting with a third party expert (such as outside employment counsel) on the complaint. The Company shall also provide a means, such as a hotline or monitored email account, for employees to contact the third party expert independent of the Company with sexual harassment complaints."
- "Conduct an annual review and assessment of internal sexual harassment policies and procedures to ensure effectiveness. As part of this annual assessment, consider conducting 'tests' to determine whether the reporting systems are working."
- "Consider continuing to regularly survey employees regarding workplace harassment issues as one of many diversity and workplace satisfaction metrics."

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<sup>663</sup>

Id.

- "Train ER investigators on proper investigations to make sure the issues outlined in [this c]hapter . . . do not continue."

As for addressing and preventing conflicts of interests and instituting internal controls, the special committee has made,<sup>664</sup> and the board of directors and Company have adopted, the following recommendations of the special committee:

- "Require specific reporting to the Compliance and Audit committees of any employment-related settlements above a specified threshold."
- "Develop specific protocols and procedures to account for potential conflicts of interest that can arise from lawyers performing services both for the Company and for individuals at the Company."
- "Prohibit Company executives and Board members from entering into any personal loan arrangements with others at the Company."

Finally, the Audit Committee of the Board of Directors will receive, on an ongoing basis, trend analyses of sexual harassment complaints received by the Company, to better understand and address sexual harassment at the Company.<sup>665</sup>

## **I. The Company Implements Remedial Measures**

The Company has provided the IEB with a submission entitled "Wynn Resorts and Encore Boston Harbor: Continuous Suitability and Commitment to the Commonwealth," dated February 12, 2019.<sup>666</sup> Among other things, this submission, which is referred to as the Company's Whitepaper, details the comprehensive internal review the Company has undertaken since the allegations against Mr. Wynn were brought to light in the *WSJ* article over a year ago. The Company's Whitepaper also details the policy and organizational changes that have been implemented across the Company as a result of the review, including, according to the Company's Whitepaper, "a revised and enhanced Preventing Harassment and Discrimination Policy, enhancements to the Company's reporting and investigative process, a revised and now best-in-class Compliance Program, as well as changes to policies to avoid potential conflicts of

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<sup>664</sup> Id. [REDACTED]

<sup>665</sup> Id. [REDACTED]

<sup>666</sup> [REDACTED]

interest and an overall strengthening of workplace culture and community engagement."<sup>667</sup> A copy of the Company's Whitepaper submission has been attached to this report as Appendix B.

The Company's Whitepaper also details the new corporate leadership that has been put in place, starting with the elevation of Matthew Maddox on February 6, 2018 to the position of CEO of Wynn Resorts, Limited.

In addition, there were substantial changes in 2018 to the makeup of the Company's board of directors. In 2018, six members of the Company's board of directors either resigned or did not seek re-election: Robert Miller, James Virtue, John Hagenbuch, Ray Irani, Alvin Shoemaker, and D. Boone Wayson.

On April 18, 2018, the Company announced the appointment of three new directors to the board, Betsy Atkins, Margaret (Dee Dee) Myers, and Winifred (Wendy) Webb. The following biographical information is taken from the Company's Whitepaper regarding these three new board members.

**About Betsy Atkins**

Ms. Atkins is a three-time CEO, serial entrepreneur, and founder and the CEO of Baja Corporation, a venture capital firm focused on technology, renewable energy, and life sciences, since 1994. In addition to her service on the Wynn Resorts' Board, she also serves on the Boards of Schneider Electric and SL Green Realty, and has previously served on the Board of Cognizant Technology Solutions. She was the CEO of NCI, a creator and manufacturer of nutraceutical foods, such as PowerBar. Ms. Atkins was also the CEO of Clear Standards, which developed enterprise-level software for energy management and sustainability. Ms. Atkins is a corporate governance expert whose notable work in that area has been featured in The Financial Times, Business Insider, and Forbes. She is a frequent guest on financial news shows and is the author of *Behind Boardroom Doors: Lessons of a Corporate Director*. Ms. Atkins brings to the Company's Board of Directors extensive expertise in corporate governance that includes technology, retail, financial services, healthcare, restaurants and hospitality, automotive, and logistics.

**About Margaret (Dee Dee) Myers**

Ms. Myers has been the Executive Vice President for Worldwide Corporate Communications and Public Affairs at Warner Bros. Entertainment since September 2014. She leads the company's strategic communications, media relations, crisis management, branding, executive positioning, state and local government relations, corporate social responsibility, and philanthropy programs. Ms. Myers was notably the first woman to serve as White House Press Secretary

from 1993 to 1995, where she traveled around the country and around the world with President Bill Clinton, serving as his primary spokesperson and senior advisor. After leaving the White House, she served as a political analyst and commentator, appearing frequently on network and cable television programs; writing for a wide range of publications including The New York Times, the Washington Post and Time magazine; and speaking on political and women's issues. She also worked as a consultant on the NBC television show, The West Wing, across its seven-year, award-winning run. In 2010, she joined the Glover Park Group as Managing Director of Strategic Communications and Public Affairs, where she counseled a broad range of clients in the media, non-profit, political, and corporate sectors, helping them shape communications strategies, build advocacy campaigns, refresh brands, manage crises and plan and execute events. She is the author of the 2008 New York Times best-selling book, Why Women Should Rule the World, which argues that increasing the number of women in leadership positions across the public and private sectors will provide more diverse perspectives, improve decision-making and lead to better outcomes. Ms. Myers brings to the Company's Board of Directors expertise in global strategic communications, media relations, crisis management, branding, corporate social responsibility, and philanthropy.

**About Winfred (Wendy) Webb**

Ms. Webb is the CEO of Kestrel Corporate Advisors, an advisory services firm counseling organizations on strategic business issues, including growth initiatives, digital marketing, board governance and investor relations. From 1988 to 2008, she served as a senior executive at The Walt Disney Company, including as Senior Vice President of Investor Relations and Shareholder Services where she was responsible for the company's strategic and financial communications worldwide, and for governance outreach. From 2008 to 2010, she was part of the senior executive team at Ticketmaster, and from 2010 to 2013, she was Managing Director at Tennenbaum Capital, now part of BlackRock. In addition to Wynn Resorts, Ms. Webb currently serves on the Boards of ABM Industries, where she serves on the Audit and Strategy & Risk Committees, as well as on the board of trustees for American Homes, a real estate investment trust. She is also Co-Chair of nonprofit Women Corporate Directors (WCD), Los Angeles/Orange County Chapter. Previously, Ms. Webb was an Independent Director for TiVo Inc., where she served on the Audit and CEO Search Committees, and for Jack in the Box, where she served on the Finance and Audit Committees and chaired the Governance Committee. In addition, Ms. Webb's non-profit Independent Director roles have included PetSmart Charities Inc. and the Smith College Board of Trustees. Ms. Webb brings to the Company's Board of Directors experience developing award-winning investor relations, strategic communications, and brand-building programs. She also brings significant industry expertise in travel and tourism, hospitality, media and entertainment, and facilities services. She is also a board Audit Committee qualified Financial Expert. Ms. Webb has been recognized as a 2018 National Association of Corporate Directors (NACD) *Directorship 100* Honoree, which

recognizes the most influential leaders in the boardroom and corporate governance community, and those who have demonstrated a commitment to advancing exemplary board leadership, oversight, and courage. In addition, Ms. Webb has also recently received Directors & Boards Magazine 2018 *Directors to Watch* recognition, which recognizes up to 20 leading and accomplished women directors on public company boards. Ms. Webb was also recently honored as one of Women Inc.'s 2018 *Most Influential Corporate Board Directors*.

On July 5, 2018, the Company announced that Attorney Sinatra would cease to serve as the Company's executive vice president, general counsel, and secretary, effective July 15, 2018. At that time the Company had not finalized the terms of her transition and departure.<sup>668</sup>

On July 19, 2018, the Company officially reported to the MGC that Ellen Whittemore was named as the Company's new executive vice president, general counsel, and secretary. The following is the biographical information on Attorney Whittemore taken from the Company's Whitepaper:

**Ellen Whittemore**

Whittemore, a world-renowned gaming regulatory attorney, has replaced Kimmarie Sinatra as Executive Vice President, General Counsel, and Secretary of the Company. Ms. Whittemore has represented gaming companies for over 30 years, including as a partner at leading Nevada gaming law firms, in a variety of areas such as licensing, compliance and regulatory investigations. She has also worked with the Nevada Attorney General's Office, serving as a supervising deputy attorney general for the Gaming Division, which provides legal counsel to the Nevada Gaming Control Board and the Nevada Gaming Commission. In that capacity, she was the primary author of several Nevada Gaming Commission regulations, including those regarding accounting requirements and manufacturers and distributors. She has previously been recognized in Chambers USA for gaming and licensing law as well as in Best Lawyers in America for gaming law and information technology law. As a private attorney, she was the architect of the fully independent compliance program of MGM Resorts International, the first of its kind. She is the only woman on the Executive Committee of the Board of the American Gaming Association.<sup>669</sup> She also has served since August 2017 as a member of the Board of Global Gaming Women, the goals of which are to support, inspire, and influence the development of women in the gaming industry. She is the Treasurer of the International Association of Gaming Advisors and a

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<sup>668</sup> See Wynn Resorts, Limited, Item 5 to *Form 10-Q* for quarter ended 6/3/18 (Item 5. *Other Information*), p. 52, retrieved from SEC EDGAR website at <http://www.sec.gov/edgar.shtml>.

<sup>669</sup> According to footnote 7 in the Company's Whitepaper, "Membership on the Executive Committee is reserved for the Chief Executive Officers of the gaming industries' preeminent companies. Wynn Resorts CEO Matt Maddox asked Ms. Whittemore to serve in his stead, in part in recognition that there should be a woman on that committee."

member of the International Masters of Gaming Law. She is a former trustee of the University of Nevada, Reno Foundation Board. Ms. Whittemore's extensive background in gaming law and regulatory compliance matters in Nevada and throughout the United States will certainly help the Company refocus its efforts on regulatory compliance and re-establish its relationships with gaming regulators.

On August 3, 2018, Wynn Resorts entered into a Cooperation Agreement with Elaine Wynn regarding the composition of the Company's board of directors and certain other matters, including, among other things, the appointment of Mr. Philip G. Satre to the Company's board of directors, standstill restrictions, releases, non-disparagement, and reimbursement of expenses. The term of the Cooperation Agreement expires on the day after the conclusion of the 2020 annual meeting of the Company's stockholders, unless earlier terminated pursuant to the circumstances described in the Cooperation Agreement.<sup>670</sup>

That same day, the Company announced that Mr. Satre was appointed as the Vice Chairman of the board, would sit on the board's nominating committee, and would be an *ex officio* member of the compliance committee (along with Ms. Mulroy). Mr. Satre became Chairman of the board on November 6, 2018. In addition, the Company announced the appointment of Richard Byrne as a new director and that he would be a member of the board's audit committee.

The following biographical information is from the Company's Whitepaper.

**Phil Satre**

Mr. Satre is a seasoned gaming executive with regulatory experience in several jurisdictions and has served in various leadership roles in the gaming industry for more than 38 years, including as Chairman and CEO of Harrah's Entertainment and Chairman of the Board of International Game Technology. He is the president of the National Center for Responsible Gaming and currently serves as a member of the Board of fashion retailer, Nordstrom, Inc., from which he will retire in the near future. Mr. Satre has also served on the boards of International Game Technology, NV Energy, Tabcorp Holdings Ltd., and Rite Aid Corporation. In the non-profit sector, he has also served various roles, including as a Trustee of the National World War II Museum, a Trustee of the National Automobile Museum – The Harrah Collection in Reno, NV, and an Emeritus Member of the Stanford University Board of Trustees. Mr. Satre has received numerous accolades for his notable work, including election to the American Gaming Association's Hall of Fame and UNLV's Business Hall of Fame. He has also received Lifetime

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<sup>670</sup> Id. [REDACTED]

Achievement Awards from the American Gaming Summit and the East Coast Gaming Congress. Mr. Satre has also previously been named to the Directorship 100 by the National Association of Corporate Directors, one of the nation's top 100 Chief Executives by Chief Executive Magazine, Gaming Executive of the Year by Casino Journal, and best chief executive in the casino and hotel industries by the Wall Street Transcript. Mr. Satre brings to the position of Chairman of the Board extensive leadership experience, an unparalleled skill to effectively respond to complex financial and strategic challenges, and wide-ranging experience with corporate governance matters. Mr. Satre also serves as an *ex officio* member of the Company's Compliance Committee, allowing overlapping representation on the Company's Compliance Committee and Board of Directors.

**Richard Byrne**

Mr. Byrne has worked extensively with numerous gaming companies, including Wynn Resorts, in arranging debt and equity financing and providing strategic advice. He is currently the President of Benefit Street Partners, and had a long and illustrious career with Deutsche Bank including becoming the Global Co-Head of Capital Markets and the CEO of Deutsche Bank Securities, Inc. Mr. Byrne also serves as Chairman and Chief Executive Officer of Business Development Corporation of America and as Chairman and Chief Executive Officer of Benefit Street Partners Realty Trust, Inc. He also serves as a member of the Board of Directors of MFA Financial, Inc. and New York Road Runners. In the gaming, lodging, and leisure sector, Mr. Byrne was a perennially top-ranked credit analyst. He brings to the Company's Board of Directors extensive financial expertise and profound knowledge of the gaming, lodging, and leisure sector.

On August 3, 2018, the Company announced that Matthew Maddox, the current CEO, would be joining the board as a director. The Company's Whitepaper included the following biographical information on Mr. Maddox:

*Specifically, as noted, Matt Maddox has replaced Mr. Wynn as Chief Executive Officer of Wynn Resorts, and also currently serves as President of the Company and a member of the Board of Directors. Since assuming the role of Chief Executive Officer of Wynn Resorts, Mr. Maddox has spearheaded the transformation of the Company to a more traditionally structured leadership, with appropriate checks and balances. Mr. Maddox first joined the Company in 2002, and from March 2003 to September 2005, he was resident in Macau. From September 2005 to September 2006, Mr. Maddox spent most of his time in Macau, where he helped lead the development of Wynn Macau. In November 2013, he was named President of the Company, where he again helped lead the development and opening of the \$4.2 billion Wynn Palace in Cotai, Macau, SAR. Mr. Maddox has also served as the Company's Chief Financial Officer from March 2008 to May 2014, and has held various other roles since joining the Company, including Senior Vice President of Business Development and*

*Treasurer; Treasurer and Vice President-Investor Relations; Senior Vice President of Business Development for Wynn Las Vegas; Chief Financial Officer of Wynn Resorts (Macau); and a director of Wynn Macau, Limited. Mr. Maddox began his career with Bank of America's Mergers & Acquisitions department before joining Caesars Entertainment, Inc.'s Corporate Finance department. Mr. Maddox brings to the Company, as well as its Board of Directors, over 18 years of incomparable experience in the hotel, casino, and gaming industries.*

Additionally, the Company's Whitepaper included biographical information regarding Patricia Mulroy, Jay L. Johnson, Clark T. Randt, Larry Whelan, and Rose Huddleston.

Also on August 8, 2018, the Company filed a Form 10-Q which detailed the terms of Attorney Sinatra's separation from the Company and stated that she ceased to serve as the Company's executive vice president, general counsel and secretary, effective July 15, 2018. The Form 10-Q also stated the following. On August 3, 2018, the Company entered into an agreement with Ms. Sinatra (the "Agreement") to finalize the terms of her transition and departure. The Agreement terminates Ms. Sinatra's previous employment agreement with the Company as of August 3, 2018 and provides that through December 31, 2018, Ms. Sinatra will remain available to the CEO of the Company and provide advice, guidance, and cooperation with respect to litigation and general corporate matters for up to 25 hours per calendar month, and cooperate with the Company and regulatory authorities regarding any outstanding matters that involved Ms. Sinatra during the time and scope of her employment with the Company. In consideration of the terms set forth in the Agreement, the Agreement provides to Ms. Sinatra: (1) a cash payment of \$1,814,000; (2) continued participation in the Company's senior executive health program through December 31, 2018; and (3) health care benefits coverage for Ms. Sinatra and her dependents which shall be paid for by the Company until the expiration of Ms. Sinatra's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985. In addition, 39,286 unvested shares granted to Ms. Sinatra under a Restricted Stock Agreement and 25,000 unvested stock options granted to Ms. Sinatra under a Stock Option Agreement, respectively, vested on August 3, 2018; and the transfer restriction with respect to the vested shares granted to Ms. Sinatra in January 2016 was removed as of August 3, 2018. Pursuant to the Agreement, Ms. Sinatra granted a waiver and release of claims to the Company



and agreed to certain non-competition and confidentiality provisions.<sup>671</sup> October 28, 2018, the Company terminated the provision regarding her availability to the Company for 25 hours per calendar month. Given that Attorney Sinatra has completely separated from the Company, she is no longer a qualifier for the Massachusetts licensee.

There are only two present qualifiers who were part of the original 2013 Massachusetts suitability investigation - Elaine Wynn and Matt Maddox. Pat Mulroy, Jay Johnson, and Clark Randt were appointed to the board after Wynn MA, LLC was licensed and they were found suitable by the MGC in the first half of 2017. The IEB has completed the suitability investigations for Philip Satre, Margaret (Dee Dee) Myers, Betsy Atkins, Winifred (Wendy) Webb, Richard Byrne, Ellen Whittemore, and Craig Billings, and the Commission may make determinations whether to issue positive determinations of suitability for those seven individuals.

The list of current individual qualifiers appears below.

**Current Individual Qualifiers** (as of the date of this report)

- Matthew Maddox (President of Wynn Resorts since November 2013, appointed CEO of Wynn Resorts on February 6, 2018, appointed as a Director for Wynn Resorts on August 3, 2018)
- Ellen Whittemore (Executive Vice President, General Counsel, and Secretary of Wynn Resorts, effective July 16, 2019)
- Craig Billings (Chief Financial Officer and Treasurer of Wynn Resorts since March 1, 2017)
- Elaine Wynn (Current 9.7% shareholder in Wynn Resorts)
- Philip Satre (Newly appointed Chairman of the Board for Wynn Resorts as of November 6, 2018; Vice Chairman of the Board for Wynn Resorts from August 6 to November 5, 2018)
- Patricia Mulroy (Director for Wynn Resorts since October 15, 2015)
- Clark Randt (Director for Wynn Resorts since October 15, 2015)
- Jay Johnson (Director for Wynn Resorts since August 22, 2016)
- Margaret (Dee Dee) Myers (Newly appointed Director for Wynn Resorts since April 17, 2018)

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<sup>671</sup> Id., [REDACTED]

- Betsy Atkins (Newly appointed Director for Wynn Resorts since April 17, 2018)
- Winifred (Wendy) Webb (Newly appointed Director for Wynn Resorts since April 17, 2018)
- Richard Byrne (Newly appointed Director for Wynn Resorts since August 3, 2018)

For the purpose of this investigation, the only present independent director who was serving in 2016, at the time of the filing of Ms. Wynn's fifth amended complaint, is Patricia Mulroy. Clark Randt was serving as a director, but was not fully part of the analysis in 2016 that is referenced earlier in the report because he was not deemed an independent director.

#### **J. IEB Concerns of Note Regarding Company's Actions during the Course of the Investigation**

The IEB identified two areas of concern regarding the Company's response and actions during the investigatory process, both of which were ultimately resolved by the Company.

*First*, when the IEB originally submitted a written request for information from the Company asking for "[a]ny and all records of employee complaints against and/or allegations of misconduct by Steve Wynn, including but not limited to, complaints and/or allegations involving sexual misconduct," the Company responded with the following language relative to the complaint against Mr. Wynn reported by Debbie: "[Debbie] threatened to disclose what she characterized as 'embarrassing' information if Wynn Las Vegas refused to settle the 2013 [REDACTED] Complaint. When questioned by Wynn Las Vegas's outside counsel, [Debbie] alleged, for the first time, that she had engaged in sexual contact with Mr. Wynn in 2005." It is troubling that the Company's response to the IEB did not disclose that Debbie had alleged that she had been *raped* by Mr. Wynn. Nor did the Company inform the IEB of the existence of the memorandum prepared by Attorney Scott Abbott documenting that claim.<sup>672</sup>

*And second*, the Company disclosed that during the course of the investigation, James Stern, the Company's executive vice president of corporate security and investigations, had arranged for an undercover operative to go to the salon of the Company's prior employee Jorgen Nielsen on March 31, 2018 to see if Mr. Nielsen was making any statements regarding the

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<sup>672</sup> [REDACTED]

alleged sexual misconduct by Mr. Wynn and/or whether there was a connection between the allegations to Elaine Wynn.<sup>673</sup> Mr. Nielsen was a named source in the January 26, 2018 *WSJ* article. Mr. Stern told IEB investigators that he undertook this operation because he had information that Elaine Wynn had provided a piece of paper to a reporter at the Kennedy Center Honors event on December 3, 2017, and he suspected that Mr. Nielsen had stolen a list of contact information of employees and had possibly provided it to Ms. Wynn.<sup>674</sup> Mr. Stern indicated to investigators that Mr. Maddox and Attorney Sinatra had approved his operation.<sup>675</sup> Mr. Maddox told investigators that after the *WSJ* article was published, it was common knowledge that Mr. Nielsen was talking to others about Mr. Wynn, so Mr. Stern suggested having someone go into Mr. Nielsen's salon and "see . . . what he's saying."<sup>676</sup>

IEB investigators had concerns about the Company following a witness and trying to covertly obtain statements and information from witnesses while regulatory investigations and the Company's own internal special committee investigation were in process. Of particular concern was the possibility that witnesses would become aware of such activity, and their anxiety over potentially becoming a subject of a similar operation would have a chilling effect on witnesses' willingness to come forward or being forthcoming with investigators. Notably, the undercover operative provided a detailed report from her encounter with Mr. Nielsen, and there were no statements from him indicating that he had stolen company information or had fabricated allegations against Mr. Wynn. After the IEB expressed these concerns to the Company, the Company assured the IEB that it would conduct no further undercover operations that may potentially interfere with the IEB's investigation.

#### **K. Identification of [REDACTED] Allegations of Sexual Misconduct by Mr. Wynn**

As part of this investigation, the IEB set out to determine whether the existence of the types of allegations presented in the *WSJ* article could be verified. In addition, the IEB sought to

<sup>673</sup> [REDACTED]

<sup>674</sup> [REDACTED]

<sup>675</sup> Id. Attorney Sinatra did not recall whether she gave approval for the operation. [REDACTED] Mr. Maddox confirmed that he had authorized it; he could not recall whether Attorney Sinatra had authorized it. [REDACTED]

<sup>676</sup> Id. [REDACTED]



[REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. IEB Investigators Interviewed 12 Alleged Victims of Mr. Wynn's Alleged Sexual Misconduct<sup>692</sup>

IEB investigators directly interviewed 12 current or former employees of companies affiliated with Mr. Wynn and one contract employee.<sup>693,694</sup> They all reported having been

[REDACTED]

<sup>692</sup> One of the 12 IEB interviews was of a woman who filed [REDACTED] against the Company.

<sup>693</sup> The IEB utilized Massachusetts State Police Lieutenant Gina Joyce to conduct the interviews of the alleged victims and targets. Lt. Joyce, a sworn officer since 1994, has received training through the Massachusetts State Police Academy, New Braintree, MA, in investigations of rape and other types of sexual assault, sexual abuse, and sexual misconduct, including training in the interviewing of

victimized by Mr. Wynn via varying degrees of sexual misconduct.<sup>695</sup> Nine of those employees alleged that the misconduct occurred during their employment at the Company, two of those employees alleged incidents while they were employed at prior companies that Mr. Wynn owned and operated, and one was a contract massage therapist who worked on Mr. Wynn's yacht. Reported instances of misconduct involved Mr. Wynn allegedly:

- making unwelcome sexual advances
- exposing himself during massage appointments
- exposing himself by sitting at the salon wearing short, loose fitting shorts without underwear
- requesting "sexual release" during massage appointments
- intentionally positioning his hands in his lap during manicures so that the technician would have to "graze" his genital area
- performing inappropriate touching/rubbing of technicians during manicures
- making inappropriate sexual comments during manicures
- pressuring employees into sexual conduct

The Company's special committee's report reflects interviews of certain witnesses who were not interviewed by the IEB, some of whom recounted additional allegations similar in nature to those made by witnesses who were interviewed by the IEB.

IEB investigators spoke with complainants about whether or not they reported their experiences to supervisors or upper-level management. One complainant, "Ingrid," told investigators that she had reported matters to Marc Schorr, Maurice Wooden, and also directly to Mr. Wynn.<sup>696,697</sup> Another complainant, "Heather," who is referenced previously in Section XII.E

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complainants in these types of cases. Lt. Joyce's training also included sexual assault criminal law updates.

<sup>694</sup> One of the 12 individuals who was interviewed by the IEB sent a demand letter to the Company in November of 2018 regarding alleged misconduct by Mr. Wynn. [REDACTED]

<sup>695</sup> Alleged victims of sexual misconduct are not named in this report in order to maintain confidentiality. Cf. G.L. c. 265, § 24C.

<sup>696</sup> Ingrid indicated to IEB investigators that she was terminated from the Company in April of 2013 at the direction of Steve Wynn.

<sup>697</sup> The reporting of matters to Mr. Gullbrants and then to Mr. Wooden is discussed in Section IX.B of this report. The matters allegedly reported to Mr. Wooden referenced in this section are separate instances.

of this report, told investigators that she reported matters to Maurice Wooden. Another complainant, "Jane," told investigators that she reported matters to Mr. Nathan and Steve Weitman, whom she identified as Executive Director of Food and Beverage at the time.<sup>698</sup> Certain complainants did not report their experiences to anyone, while others reported matters to mid-level managers. Two complainants told investigators that they had reported matters to Ella Kent (Stimpson), the spa and salon director. Ms. Kent was interviewed by investigators and did not recall any complaints regarding Mr. Wynn being brought to her attention.<sup>699</sup> Ms. Kent is no longer an employee of the Company but continues to work in the industry at a facility in another state.

The special committee's investigators also found that some former members of management, as well as some individuals who were members of management at the time the special committee issued its report, were aware of those allegations but failed to report or investigate them, contrary to Company policy. The special committee's findings were consistent with the findings of the IEB in this regard.

Overall, of the allegations of sexual misconduct identified in this investigation, the majority of alleged incidents went unreported to management, with fear of job loss being a major reason noted by the alleged victims and targets for their hesitancy to report. Some alleged victims and targets are alleged to have reported incidents to some level of management at the Company, but not to the employee relations department or the legal department. Certain instances reached the upper level of Company management.

It bears repeating that the IEB's charge was to investigate a regulatory matter. This is not a criminal prosecution, and Mr. Wynn is not under indictment or standing trial. Consequently the Commission need not determine whether or not Mr. Wynn did in fact sexually harass or perpetrate any sexual assault upon any person. Nor is Mr. Wynn's suitability currently under Commission review. The Commission is charged with determining whether the Massachusetts licensee and its current qualifiers are suitable under the standards set forth in the Massachusetts gaming law and regulations, as described in Section I.B. of this report, and to address related questions regarding disclosure to the Commission during the suitability investigation in 2013.

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<sup>698</sup> IEB investigators were unable to speak with Mr. Nathan, and Mr. Weitman denied ever hearing such allegations.

<sup>699</sup> Ms. Kent did not agree to have her interviews with investigators recorded.



**L. Numerous Witnesses Tell the IEB that they had No Knowledge of Any Allegations of Sexual Misconduct by Mr. Wynn**

IEB investigators interviewed dozens of witnesses who indicated that they had no knowledge of sexual misconduct by Mr. Wynn. These witnesses encompassed all levels at the Company, including board members, Company executives and senior managers, other Company employees, and outside counsel for the Company. Mr. Wynn has adamantly and repeatedly denied any non-consensual sexual conduct with Company employees.

Mr. Wynn provided a written statement to the special committee investigators, which he also provided to the IEB, stating, in part, as follows:<sup>700</sup>

*I had multiple consensual relationships during my tenure at Wynn Resorts and made no attempt to document them. . . . I deny . . . ever having any relationship that was not consensual.*

**M. Summary of the Nevada Litigation, Filed by Mr. Wynn against the MGC, the IEB Director, and the Company on November 7, 2018**

As previously mentioned in Section II.B of this report, the Company did not produce documents regarding the 2014 settlement until September 28, 2018, which was, by the Company's own admission, not timely. The Company explained that it had only recently identified those documents. Soon thereafter, Attorney Donald Campbell apparently became aware of the Company's production of certain documents to the IEB. A dispute arose between Mr. Wynn (through Attorney Campbell) and the IEB as to whether the Company's disclosure of certain documents to the IEB was appropriate, or whether the documents were, as claimed by Mr. Wynn, protected pursuant to an implied joint defense/common interest privilege that Mr. Wynn claimed he had with the Company.<sup>701</sup> The IEB evaluated Mr. Wynn's position on the matter, and after consulting with and upon the advice of its outside counsel, and after considering additional information provided by the Company, the IEB declined Mr. Wynn's request, made through Attorney Campbell in a letter dated October 15, 2018, that the IEB return or refrain from using and destroy the supposedly privileged documents.<sup>702</sup>

<sup>700</sup> [REDACTED]

<sup>701</sup> [REDACTED]

<sup>702</sup> Id., [REDACTED]

On November 7, 2018, as the IEB neared completion of its report, Mr. Wynn filed suit against the Company, the Massachusetts Gaming Commission, and Karen M. Wells, both in her official capacity as Director of the IEB and in her individual capacity. The complaint was filed by Mr. Wynn in District Court, Clark County, Nevada, and sought compensatory damages against the Company, compensatory and punitive damages against the Commission and Director Wells, an order preventing the Company from providing to the IEB documents protected by Mr. Wynn's attorney-client privilege or privacy rights, and an order prohibiting the Commission and Director Wells from publishing an investigatory report that contains, discloses, or relies upon any such materials.<sup>703</sup>

On November 19, 2018, the Nevada court held a hearing on Mr. Wynn's request for a temporary restraining order to prevent further disclosures of his allegedly protected materials. Counsel for the Commission and Director Wells argued that the Nevada state court should decline jurisdiction over the claims against the MGC, an agency of the Commonwealth of Massachusetts, and Director Wells in her official capacity. Counsel for the Commission and the Company also argued that the documents at issue were not subject to any privilege or protection belonging to Mr. Wynn, and that the statements at issue in transcripts of attorney interviews were not privileged, in part because those statements were made by experienced attorneys who were also represented by counsel during the interviews and who presumably would not disclose privileged information. On the same day (November 19, 2018), the court issued the temporary restraining order sought by Mr. Wynn (later embodied in a written order dated November 29, 2018).<sup>704</sup> On January 3 and 4, 2019, following limited discovery, the court held a hearing on Mr. Wynn's request for a preliminary injunction. At the conclusion of the hearing, the court issued an order (embodied in a written Order Granting Preliminary Injunction ("PI Order") dated February 1, 2019), protecting certain material Mr. Wynn sought to protect.<sup>705</sup>

Following the issuance of the PI Order, the parties engaged in discussions to attempt to resolve the matter short of further litigation. Absent such a resolution, further litigation on the matter in the form of an interlocutory appeal by the Commission and the Company, the discovery

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<sup>703</sup> [REDACTED]

<sup>704</sup> [REDACTED]

<sup>705</sup> [REDACTED]

The 2014 EEOC Matter is described at greater length in Section IX.A.  
(The PI Order itself is public, but the list of documents affected by the PI Order remains under seal and is contained in the court's Under Seal Exhibits 10-15.)

process, a full trial on the merits, and possibly an appeal of a final judgment on the merits would have taken a year or more, with an uncertain result. Ultimately, outside counsel for the MGC negotiated a proposed Agreement and Release of Claims that permitted the disclosure of, and reliance on, the significant documents necessary to enable the Commission to render its determination on suitability.<sup>706</sup>

In an executive session of the Commission on February 20, 2019, after a presentation by outside counsel for the Commission, Loretta Lillios, Chief Enforcement Counsel and Deputy Director of the IEB spoke for the IEB given the IEB Director's recusal from the executive session.<sup>707</sup> She had been closely involved with the entire IEB investigation and was very familiar with all of the evidence obtained during the investigation. She informed the Commission that the proposed Agreement preserved the Commission's access to all of the significant items obtained during the investigation; that the materials that would remain unavailable under the proposed Agreement were, for the most part, merely cumulative of abundant other evidence unaffected by the Nevada litigation and available for the Commission's consideration; and that there was little, if any risk that the information that would remain unavailable would have an impact on the Commission's determination on suitability. Ms. Lillios also stated that she viewed the evidence presented in the unavailable sections of the special committee's report as merely corroborative of the information obtained by the IEB, which conducted its own independent investigation. Notably, the Company provided the special committee report to the Nevada Gaming Control Board, which was not sued by Mr. Wynn, and the claims against the Company by the NGCB are noted in Exhibit 7. The facts reflected in the NGCB's complaint are largely consistent with those uncovered by the IEB in its investigation.

During the same executive session on February 20, 2019, Massachusetts State Police Detective Lieutenant Brian Connors, Commanding Officer of the Gaming Enforcement Unit who has been the lead State Police investigator on this matter, informed the Commission, similarly, that the proposed Agreement preserved material that is significant for the Commission's review

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<sup>706</sup> [REDACTED]

<sup>707</sup> To avoid even the appearance of a conflict of interest, IEB Director Wells recused herself from the executive session on February 20, 2019 and from participating in advising the Commission on whether or not to accept the proposed Agreement, as she was sued in her individual capacity.

and, in response to a question about whether the unavailable information would "move the needle," Det. Lieut. Connors answered that in his view it would not.

The Commission voted unanimously in open session to authorize counsel to finalize the Agreement. The parties executed the Agreement as of March 1, 2019, and filed a Stipulation of Dismissal of the Nevada lawsuit on the same day, dismissing with prejudice all claims. Immediately thereafter, the IEB took steps to finalize its report consistent with the Agreement. To ensure its compliance with the Agreement, the IEB retained Michael S. Greco, an experienced and highly regarded litigation attorney and former president of the Massachusetts Bar Association and the American Bar Association, to review the report thoroughly. On March 15, 2019, Mr. Greco issued a letter confirming his view that the report complies with the Agreement and that the report's factual findings are properly supported by sources that do not violate the terms of the agreement.<sup>708</sup>

For further details on the Nevada litigation, see [REDACTED]

### **XIII. THE COMPANY'S UPPER LEVEL MANAGEMENT APPROPRIATELY HANDLES 2 EMPLOYEE COMPLAINTS AT ENCORE BOSTON HARBOR**

In early 2018, Jacqui Krum, general counsel for Encore Boston Harbor, reported to the IEB that the property had terminated an employee for inappropriate behavior.<sup>709</sup> The IEB retained the services of local counsel, Denise Murphy, a partner at Rubin and Rudman LLP and Chair of the firm's Labor and Employment Law Practice Group, to independently analyze Encore Boston Harbor's handling of the HR matter and to evaluate the Company's system of handling such complaints as well as the Company's policies and procedures. Attorney Murphy regularly counsels businesses on a broad variety of employment law-related issues, including individual terminations and mass reductions, sexual harassment, and all types of discrimination claims. Attorney Murphy also counsels employers on human resources issues, including the

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<sup>708</sup> [REDACTED]

<sup>709</sup> After his termination, the employee tendered his resignation, which the Company accepted, however by that point the Company had already processed the employee's paperwork as a termination. The Company announced the employee's separation as a resignation to shield the second complainant from unwanted inquiries about her supervisor's resignation.

drafting of employment contracts, severance agreements, employee handbooks, and policy statements, and she conducts discrimination investigations and employee training seminars.

Attorney Murphy reviewed the Company's anti-harassment policies, the Company's anti-harassment training materials and protocols, the complaints filed by two Encore Boston Harbor employees, additional documents related to the complaints, and personnel files. She also interviewed 22 witnesses, some more than once. Attorney Murphy's findings regarding the investigation into the misconduct complaints are set forth in her report dated August 2, 2018, which is attached to this report at Appendix C, and includes the following:

- In significant part, the manner and method by which upper level management at the Company managed each of the two complaints against the subject (who was eventually terminated) was appropriate.
- When learning of the first complaint, which involved alleged "massaging" of the complainant's shoulders and inappropriate comments, upper level management at the Company addressed the issue immediately, consulted with available legal resources, and made the business decision to issue a warning, based on information gleaned from its investigation.
- Similarly, when upper level management at the Company received the second complaint, which involved the subject of the investigation covering the second complainant's mouth with his hand when she insisted on paying for her own coffee at Starbucks, it was addressed appropriately, taking steps to ensure that the complainant felt protected, shepherding her complaint through the HR complaint process, reacting immediately to the complaint, and initiating a prompt investigation.
- One identified deficiency involved another management level employee who received complaints from both employees and failed to report these complaints to management at the Company. Attorney Murphy found that whether the behavior reported to the manager rose to the level of sexual harassment remains a question. She found, however, that there is no doubt that the reported behavior was at best, inappropriate and should have been addressed. When asked about why he did not report the complaints, the manager stated

that he did not want to betray his employees' confidences. After multiple trainings, he should have known that it was his obligation to report that behavior.<sup>710</sup>

Attorney Murphy's findings regarding the Company's personnel policies and anti-harassment training included the following:

- The Company has a compliance committee in place which reviews policies and procedures on a monthly basis in Las Vegas. For remote locations such as the Massachusetts Encore Boston Harbor project, the Company relies upon local counsel at the Company to ensure compliance with local laws and local general employment advice.
- In Massachusetts, the Company engaged the services of the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC to review its anti-harassment policies and to provide, as needed, employment-related advice.
- In 2016, the Company hired Bryan Cohen as its in-house employment counsel. Prior to his employment with the Company, the Company relied upon its in-house counsel, Kim Sinatra (general counsel for Wynn Resorts) and Stacie Michaels (general counsel for Wynn Las Vegas), who in turn relied upon local counsel. As the Company developed the Encore Boston Harbor project, it placed Attorney Krum as its local, property level counsel in Massachusetts.
- Wynn's Zero Tolerance for Harassment and Discrimination Policy deviated from the requirements of Mass. G.L. c. 151B, *et seq.*, in two ways.
  - First, Massachusetts requires that an employer identify the person to whom complaints can be made by name (not just title or position), and provide the method by which the person can be contacted. See G.L. c. 151B, § 3A(b)(1)(vi).
  - Second, the employer must list the external agencies where complaints can be filed, providing all contact and location information for these agencies. See G.L. c. 151B, § 3A(b)(1)(vi).

The Company's policies in effect during the relevant time period did not reflect these two Massachusetts-specific requirements. Those provisions have now been corrected in the policies.

The Company's orientation or "on-boarding" process for each of its Massachusetts employees takes place, at least until the Encore Boston Harbor facility is fully operational, in Las

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<sup>710</sup> This manager is no longer employed with the Company.

Vegas, with Massachusetts employees being flown to Las Vegas for at least two to three days, or more depending on the employee's position.

- Included in the on-boarding process is anti-harassment training. That training involved human resources trainers, who present a video containing vignettes. After each vignette, the trainers engage the employees in interactive discussion about what happened. After this training, the Company provided each of the participants with a copy of the anti-discrimination policy and required a signature from each employee acknowledging receipt.
- When questioned about the impact of this training, almost all the witnesses interviewed agreed that the videos were outdated.

Aside from the fact that the videos were outdated, Attorney Murphy took issue with one point in the trainings. She wrote in her report, "The training program required that the victim of the harassment [] confront the accuser and tell him or her to stop. This requirement ignores the workplace reality of disparity of power and its chilling impact of that imbalance in the employment context. An imbalance of power, coupled with an abuse of that power, has long been accepted as a root cause of sexual harassment in the workplace. See Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986) (supervisor made employment conditioned upon tolerating sexual harassment); See also John W. Whitehead, Eleventh Hour Amendment of Serious Business: Sexual Harassment and the United States Supreme Court's 1997-1998 Term, 71 Temple L. Rev. 773 (1998) (discussing "voluntariness of sexual behavior"). Requiring that a victim of sexual harassment confront the harasser ignores the reality of power disparity. It also has a chilling effect on encouraging employees to report sexual harassment. See Simmons v. Miami Valley Trotting, Inc., 2006 WL 1000076 (S.D. Ohio 2006) (employees feared loss of employment if reported supervisor's sexual unwelcome remarks). This requirement should be eliminated from the Wynn training."

Attorney Murphy made the following recommendations:

- Encore Boston Harbor should provide the manager with coaching to reinforce his understanding of the obligations and responsibilities of management, especially with respect to obligations under state and federal anti-harassment laws.<sup>711</sup>
- The Company should update its anti-harassment training and remove it from the overall orientation process. It should be stand-alone training to ensure that it is not ignored, disregarded, or simply lost in the massive amounts of information new employees receive. It should be conducted in person, on an annual basis at each of the locations. Attendance for all employees, including top-level management, should be mandatory. The message should be conveyed that the Company addresses all complaints immediately and consistently.
- The HR infrastructure in Las Vegas should be immediately accessible to all locations, or as soon as practicable. In the interim, there should be a centralized HR professional assigned to each remote location to offer assistance, provide guidance, and input complaints into the centralized system.
- An independent third party should conduct random audits on the complaint reporting process and its resolutions.

In conclusion, after reviewing Attorney Murphy's report, the IEB notes that there is a striking contrast between the manner in which the two Encore Boston Harbor complaints were treated on the one hand, compared to the manner in which the allegations against Mr. Wynn (as set forth in this report) were treated on the other hand. Clearly, the Company had policies in place and possessed the understanding and sophistication to appropriately deal with workplace sexual misconduct complaints. The review in this section demonstrates that the two Encore Boston Harbor complaints received drastically different treatment compared to the allegations against the company CEO and Chairman.<sup>712</sup>

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<sup>711</sup> The Company informed the IEB that this manager received additional in-person and group training from both inside counsel and outside counsel before he separated from the Company.

<sup>712</sup> In the course of this investigation, the IEB also reviewed the Company's response to allegations of sexual misconduct lodged in 2005 against one of the Company's contract employees. The IEB reviewed timely and comprehensive investigative reports prepared by the Company in that matter, demonstrating that the Company was capable of conducting robust investigations into allegations of sexual misconduct.



#### **XIV. FINANCIAL EVALUATION OF THE COMPANY FOR ONGOING SUITABILITY**

The IEB retained the services of HLT Advisory Inc. ("HLT") to conduct a review of the financial stability of Wynn MA LLC, a subsidiary of Wynn America, LLC, which in turn is a wholly owned subsidiary of Wynn Resorts, Limited (collectively the "Company"). The IEB notes that HLT also conducted the financial review in connection with the Company's Phase 2 application in 2013. HLT is a gaming industry business and financial advisory services firm focussed on the North American gaming market. Its report on the Company's financial stability dated July 3, 2018 and its Update Report on the Company's financial stability dated September 14, 2018 are attached to this report as Appendix E and Appendix F, respectively.

HLT was formed in 2005 and currently has three managing directors and one director. Combined, they have over 60 years of experience providing advisory services and/or direct work experience in the gaming industry. HLT's core client base consists of state (in the U.S.) and provincial (in Canada) government gaming regulatory agencies. HLT's reports in this matter were prepared by Drew Chamberlain and Robert Scarpelli, both Managing Directors of HLT. Mr. Chamberlain is experienced in the financial elements of casino operations, as well as in the operations side of the business. Mr. Scarpelli has been providing business advisory services to the international hospitality and leisure industries for over 25 years, and spent 15 years at PricewaterhouseCoopers' Canadian Hospitality and Leisure practice area within the Corporate Finance Group.

The following information in this Section summarizes HLT's review and conclusions.

The scope of HLT's review included:

- Update on key markets - brief overview of the financial performance of the Company, focusing on markets where the Company operates and an update of committed casino projects (outside Massachusetts).
- Update on Massachusetts Casino Project - review conditions attached to the granting of the Massachusetts Region A casino license and profile the status of the casino project.
- Financial Position – assess the financial position of Wynn Resorts immediately prior to the start of 2018 as depicted by typical industry.

- Current situation – identify and quantify any impacts to the Company related to the misconduct allegations that came to light at the end of January 2018, and monitor additional related events that have not yet surfaced related to the allegations.

#### **A. Market Update**

The Company operates in the two largest and most competitive markets globally. The financial stability of the Company is greatly influenced by economic factors, competition, and government policy changes in these markets that are beyond the control of the Company. Key market update conclusions since the end of 2013 include:

- Despite a \$500 million total market decline in baccarat table gaming between 2013 and 2017, a key segment of Wynn Las Vegas, the Company has generally maintained its market share (10.6% in 2017 compared to 11.4% in 2013). While the Company's Las Vegas gaming revenues declined by 8.8 percent between 2013 and 2017, non-gaming gross revenues increased by 12.5 percent for the same period, resulting in overall growth of 4.3 percent in total revenues between 2013 and 2017. The Las Vegas gaming market is trending downward slightly in 2018.
- While the Macau market was significantly impacted by the implementation of a government policy focused on curtailing the "flow of capital" from China, the opening of a second casino has helped the Company increase its gaming revenues by over \$500 million and its market share by 4.7 percentage points (from 8.4% to 13.1%) despite increased competition (6 additional casinos including Wynn Palace opened in the market since the end of 2013). While the Macau gaming market has continued to grow since 2016, the outlook for future growth has weakened due to state of the overall Chinese economy.
- Macau operations continue to generate most of the Company's gross revenues. The Macau license expires in 2022. As of the date of this report, there is no indication if the license will be renewed nor the terms of the renewal if it is renewed. If this license is not renewed, the financial stability of the Company will be severely impacted. If the license is renewed, the terms of that renewal could also impact the Company, both positively or negatively.

#### **B. Massachusetts Casino Project**

The Massachusetts casino project represents a significant private sector development in the Commonwealth. The sheer size and site conditions make this a complex project which in turn increases development risk.

- While cost overruns are typical in complex projects such as the Massachusetts casino project, costs have increased by approximately 57 percent or by over \$900 million. This has impacted the funding plan that was submitted in the Company's Phase 2 application submission.

- As of the end of June 2018, \$1.64 billion of a total development budget of \$2.50 billion had been spent. The Company intends to fund these remaining funds with available borrowing under the Wynn America credit facility, existing cash balances and future cash flows from operations.

### **C. Financial Position Conclusions**

As part of the Phase 2 Financial Assessment, HLT assessed the then current (as of 2013 year-end) financial position of the Company as sound, and the outlook of the Company, based on markets that it operated in, provided the Commonwealth with a high degree of comfort that the financing plan framework submitted by the Company could be implemented even if cost overruns occurred.

HLT has also concluded that while the current (as of 2<sup>nd</sup> Quarter 2018) financial position of the Company is still sound, the outlook of the Company, based on the markets that it operates in, does not provide the Commonwealth with the same degree of comfort as it did in mid-2014. HLT has concluded that both the Las Vegas and Macau markets have seen increased investment (i.e., competition) since 2014, and both markets are currently showing signs of weakening. Further, HLT commented that the Chinese government policy focused on curtailing the flow of capital from China has highlighted the impact that non-gaming government policy changes can have on market growth and stability. Finally, HLT noted that Company's Macau license expires in 2022, and the Company has not received clarity on the government's post 2022 intentions.

### **D. Current Financial Situation**

HLT has concluded that the current financial situation of the Company does not suggest that its financial stability has been impaired by the misconduct allegations:

- The Company stock price continued to strengthen post the misconduct allegations. The decrease in stock price since June 2018 reflects the weakening of both the Las Vegas and Macau gaming markets. This trend is also being experienced by other major gaming companies with significant Las Vegas and Macau operations.
- Company earnings over the second quarter of 2018 have showed continued growth, led by Macau (start of second full year of operations for Wynn Palace, Macau).
- The Company settled a long-standing lawsuit with the Okada parties at an amount that was financially manageable.
- Lawsuits that have arisen directly related to the misconduct allegations, however, may have an adverse impact on the financial stability of the Company in the future.

With that said, there is no evidence to date to allow for a reasonable assessment of this potential impact.

#### **E. Financial Review Conclusions**

HLT was retained by the IEB to review the financial stability of the Company as it relates to the misconduct allegations against Mr. Wynn, and his subsequent departure as the Company's CEO and Chairman. Based on this review, HLT concludes Wynn Resorts' financial stability has not been negatively affected by the events surrounding the misconduct allegations. The financial stability of the Company is contingent upon the Company maintaining its gaming licenses in Nevada, Macau, and Massachusetts and influenced by the market performance of the jurisdictions that it operates in and the Company's market share in these jurisdictions.

### **XV. CONCLUDING COMMENTS AND OBSERVATIONS**

As was outlined in January of 2018 after the *WSJ* published an article about allegations of sexual misconduct by Mr. Wynn, the IEB's investigation into the matter focused on the following four areas:

- 1) a review of the suitability of individual qualifiers who potentially had knowledge of allegations of sexual misconduct by Mr. Wynn upon employees, including a review of the information provided by Wynn MA, LLC and its qualifiers in connection with the application for a Massachusetts gaming license in 2013;
- 2) a review of any Company action, or lack thereof, taken by senior or executive level managers upon learning of the alleged misconduct;
- 3) the Company's response following the January 2018 press reports regarding the alleged misconduct; and
- 4) a review of the potential impact of the allegations upon the financial stability of the Company.

#### **A. Suitability of Qualifiers**

As has been detailed in the above sections of this report, the IEB identified substantial information regarding individuals employed by and associated with the Company and their actions regarding sexual misconduct allegations against Mr. Wynn. The IEB recognizes that the individuals discussed in this report as bearing the most responsibility for the corporate governance failures no longer have any further relationships with the Company and that there has

been an almost complete change in the list of qualifiers for the Wynn MA, LLC license. Of the present qualifiers, the IEB recommends that the Commission include among its considerations at an adjudicatory hearing the knowledge Patricia Mulroy, Clark Randt, and Matthew Maddox had in 2016 regarding the allegations made in Elaine Wynn's fifth amended crossclaim pertaining to the 2005 settlement agreement, as they are the only remaining qualifiers who were with the Company at the time it was filed. The Commission also should consider the initial reflexive support for Mr. Wynn upon the publication of the *WSJ* article. Given that Mr. Maddox is now the face of the Company in his new roles as president, CEO, and director, the Commission also should independently evaluate Mr. Maddox's disavowal of any knowledge of any allegations of sexual misconduct by Mr. Wynn through the years.

The IEB further recommends that the Commission consider at an adjudicatory hearing the knowledge Elaine Wynn had in 2009 of the 2005 rape allegation, and evaluate whether or not her communication to the Company's general counsel adequately satisfied her fiduciary obligations as a director, given the documents in her possession at the time. Also, the Commission may want to consider whether or not Ms. Wynn had a fiduciary obligation to obtain further information from Mr. Nathan regarding the 2006 matter. The Commission also should evaluate her reasoning for non-disclosure of information to the Commission in 2013.

#### **B. Information Provided to the Commission in 2013**

The information provided by the Company and its qualifiers in connection with the application for a Massachusetts gaming license in 2013 should be considered by the Commission. (See Section VIII of this report).

### **C. Review of IEB's Concerns and Contemporaneous Corporate Action**

This report details a number of concerns regarding corporate knowledge of allegations of sexual misconduct by Mr. Wynn and the Company's subsequent actions or inaction. The Commission should consider the following issues when evaluating the ongoing suitability of the Company.

- Failure to apply certain of the Company's own policies and procedures to Mr. Wynn, the highest ranking employee at the Company. Of particular concern is that certain high ranking Company executives who knew about allegations lodged against Mr. Wynn by employees failed to follow Company policy mandating an investigation.
- Failure to train Mr. Wynn on the Company's "zero tolerance" sexual harassment policy.
- Failure to document and record sexual misconduct allegations made against Mr. Wynn in a personnel or other centralized file.
- Failure of the Company to require an evaluation of whether outside counsel could simultaneously represent the legal interests of both the Company and Mr. Wynn, in circumstances where Mr. Wynn was alleged to have engaged in sexual misconduct with employees. A fair and objective investigation into the allegations would have informed the Company whether its interests with Mr. Wynn aligned or diverged.
- Failure by certain executives with knowledge of allegations of sexual misconduct by Mr. Wynn to make reports to the Company's board of directors, or to the board's audit or compliance committees.
- The apparent existence of a culture at the Company where employees hesitated to report allegations of sexual misconduct against Mr. Wynn to management, with employees fearful of employment-related consequences, or believing that reporting to management would be futile.
- Failures at the Company potentially diminished the Company's ability to safeguard the well-being of its employees.

In addition to the above issues, the Commission should evaluate the following events in its consideration of the Company's suitability:

- Mr. Wynn completely separated from the Company within weeks of the publication of the *WSJ* article.
- The board of directors of the Company established a special committee that conducted an in-depth review of matters related to allegations of sexual misconduct by Mr. Wynn, the Company's former CEO and Chairman.

- The Company cooperated with the IEB's investigation.
- High ranking Company executives with confirmed knowledge of the allegations against Mr. Wynn have been removed by the Company or have resigned.
- The Company created a new executive-level human resources position and hired a new, experienced senior vice president of human resources.
- The Company hired a new general counsel who has 33 years of gaming regulatory experience, including as counsel to the Nevada Gaming Control Board and the Nevada Gaming Commission.
- The composition of the Company's board of directors has substantially changed, including the installation of a new Chairman from outside the Company.
- The position of CEO has been separated from the position of Chairman of the Company's board of directors, and an independent Chairman has been installed.
- The Company has implemented enhanced training and human resources policies, operations and structural changes, and new internal controls, including controls related to Company use of outside attorneys.

#### **D. The Corporate Response to the 2018 Reporting of Alleged Misconduct**

The entirety of the Company's response to the allegations of sexual misconduct should be considered by the Commission in evaluating the continued suitability of the Company. The Company's first response to the allegations against Mr. Wynn included both the immediate formation of a special committee to investigate the matter, but also the dissemination of public statements of support for Mr. Wynn before an investigation had taken place, and town hall meetings wherein Mr. Wynn acted to rally support for himself amongst employees. Executives at the Company have since expressed regret over the admitted error to rush to defend Mr. Wynn, particularly once information from the Company's internal investigation surfaced, and the Company has taken significant steps to implement remedial measures. Perhaps the most significant remedial measure regarding the sexual misconduct allegations against Mr. Wynn is his complete separation from the Company and consequentially his de-designation as a qualifier for the Massachusetts license. The Company also replaced the general counsel of the parent company, Wynn Resorts, Limited, with an attorney with a significant regulatory compliance background. The Company has also introduced new board members and made certain executive

staff changes, including bringing on a new vice president of human resources, a newly formed position filled by a professional with significant experience in the area.

The Company ultimately was cooperative with the IEB investigation, providing requested documents and making employees available for interviews.

The special committee investigators not only conducted an investigation into the allegations of sexual misconduct, but also evaluated policies and procedures at the Company. The Company adopted all of the recommendations made by the special committee with respect to the policies and procedures that were evaluated. A significant number of those changes occurred independently, even before the special committee's findings were presented to the board. However, the IEB notes that on August 3, 2018, with the concurrence of CEO Matthew Maddox and with Admiral Jay Johnson the only dissenting party, the board initially did not accept the special committee's recommendation to terminate Maurice Wooden as the president of Wynn Resorts.<sup>713</sup> Mr. Wooden has subsequently resigned from the Company, effective December of 2018.

#### **E. Financial Stability of the Company Was Not Affected by the Allegations or by Mr. Wynn's Departure**

Although its performance in the Macau and Las Vegas markets has weakened somewhat due to other factors, the evaluation by HLT Advisory indicates that the financial stability of the Company, despite the allegations of sexual misconduct and the departure of Mr. Wynn, remains sufficient for licensure in Massachusetts.

#### **Caution**

The IEB is mindful of the complex nature of issues surrounding sexual misconduct in the workplace, and recognizes that the publication of this report and support for disclosure of allegations of sexual misconduct may result in the disclosure of additional information by alleged victims or others. The IEB is also aware of other ongoing or threatened litigation concerning these allegations that may uncover additional information. The Commission should be mindful of this possibility and recognize that suitability of licensees and corresponding qualifiers always remains ongoing.

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<sup>713</sup> Instead of terminating Mr. Wooden, the Company placed conditions on his continued employment and required that he participate in additional training. In its discretion, the Commission may want to consider this response to the special committee's recommendation.



## **F. Final Comments**

In conclusion, the IEB investigation shows that over a course of years, a limited group of executives and employees in positions of authority at the Company, including in the legal division, disregarded Company policies when it came to certain allegations of sexual misconduct against Mr. Wynn involving employees. The investigation also shows that certain executives, with the assistance of outside counsel, took measures to conceal allegations against Mr. Wynn that came to their attention. Their efforts at secrecy made it exceedingly difficult, if not impossible, for gaming regulators to detect this potentially derogatory information through typical regulatory means, which rely heavily on robust self-disclosures by the applicant/licensee.

Mr. Wynn is no longer with the Company, and the individuals identified in this investigation as bearing the most responsibility for the corporate failures have been replaced. Those changes at the Company do not, however, erase the fact that the corporate failures revealed in this investigation are significant, repetitive, and reflective of the Company's historical governance practices. Inaction and failures on the part of the identified former executives at this publicly-traded Company, which was led by its founder at the time, appear to have contributed to a culture where employees were reluctant to report allegations against Mr. Wynn to management. The Commission should evaluate the Company's remedial measures in light of the evidence revealed in this investigation and detailed in this report.

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**Submitted by:**

Karen Wells  
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Brian Connors  
Massachusetts State Police Detective Lieutenant  
State Police Gaming Enforcement Unit

Loretta M. Lillios  
Chief Enforcement Counsel/Deputy Director, Investigations & Enforcement Bureau

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